



Decision Notice 110/2023

Pay rises for resuscitating or supplying life-saving equipment to patients

Authority: NHS Greater Glasgow and Clyde

Case Ref: 202200618

Summary

The Applicant asked the Authority for information about pay rises awarded to employees for resuscitating or supplying life-saving equipment to specified groups of patients. The Authority informed the Applicant that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 31 October 2021, the Applicant made a request for information to the Authority. The Applicant asked for full disclosure of all recorded incidences, between 31 October 2018 and 31 October 2021, of employees being given a pay rise for resuscitating or supplying life-saving equipment to specified groups of patients (elderly, disabled or nurses) without their consent.
2. The Authority responded on 10 November 2021 with a notice, under section 17 of FOISA, that it did not hold the requested information. The Authority explained that NHS staff pay

arrangements are negotiated annually with the Scottish Government and are awarded across all sectors, not in response to individual incidents.

3. On 3 December 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they believed the information requested was held by the Authority.
4. The Authority notified the Applicant of the outcome of its review on 17 May 2022¹, upholding its original decision. The Authority further explained that pay rises are governed by the Scottish Government and pay arrangements across all NHS staff groups are published on the [Management Steering Group website](#)². The Authority confirmed that there is no provision to distribute funding to particular personnel across the NHS on the basis of their ability to keep the groups of patients specified in the request alive (either with or without their consent).
5. On 28 May 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review because they believed the Authority held the information requested.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 24 June 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions, namely why it was satisfied the requested information was not held and to provide further information to support that position.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 17(1) – Notice that information is not held

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is not necessarily to be equated with information an

¹ The lateness of the Authority's review response is addressed in [Decision 070/2022](#)

² [Pay and Terms & Conditions | MSG \(scot.nhs.uk\)](#)

applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
13. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the authority.

The Authority's submissions

14. The Authority stated that staff only receive pay rises through a cost of living uplift once per year, or by moving through the pay scales associated with their role.
15. The Authority explained that its payroll system is governed and controlled in line with the nationally agreed terms and conditions of service and any pay awards issued and agreed for NHS Scotland staff by the Scottish Government Health and Social Care Directorate.
16. As such, the Authority confirmed that it has no ability to, and there is no provision for it to, apply an additional pay award or give additional incremental pay progression to particular personnel for *any* reason.
17. The Authority conducted a search of its records for any code relating to additional payments, outwith basic pay, which included the term "resus" or "equip" in the description and confirmed that it held no records that matched the criteria set out in the Applicant's request.
18. Using the same terms, the Authority undertook a wider search of job evaluation information and identified no information matching the criteria set out in the Applicant's request.
19. In summary, the Authority confirmed that no member of staff had received any additional payment or had their pay regraded on the basis of their ability to keep the specified groups of patients alive.
20. Consequently, the Authority was satisfied that it did not hold the requested information.

The Applicant's submissions

21. The Applicant stated that they believed the Authority held information falling within the scope of their request and asked that the Commissioner verify whether the Authority's response was factual.

The Commissioner's view

22. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the Applicant's request.
23. Given the explanations and submissions provided, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant.

24. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied, particularly given the Authority's submissions on the governance and administration of pay rises, that this was not the case.
25. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Head of Enforcement

9 November 2023

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).