



Decision Notice 024/2023

Complaints about ambulances not arriving on time

Applicant: the Applicant

Authority: Scottish Ambulance Service Board

Case Ref: 202200081

Summary

The Applicant asked the Authority for the details of complaints regarding ambulances not arriving on time on a specific day. The Authority notified the Applicant that it held no recorded information falling within scope of the request. Following an investigation, the Commissioner 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), (4) and (6) (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 12 December 2021, the Applicant made a request for information to the Authority. They asked for the number and full details of complaints raised against this service, detailing the public service's ambulances wasting the public's time by not arriving on time to emergency scenes to patients requiring emergency medical attention on 8 December 2021.
2. The Authority responded on 23 December 2021. It informed the Applicant that it did not hold the recorded figures for the number of complaints received against the category of "wasting the public's time". Also, the information held against complaints did not include data about

whether an incident was responded to within the target time. Therefore, the information requested was not held.

3. On 23 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 did not accept that the information was not held, and asked for the matter to be reviewed.
4. The Authority notified the Applicant of the outcome of its review on 18 January 2022. It upheld its initial response without modification, confirming that the requested information was not held.
5. On 18 January 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 considered that information was held, and asked the Commissioner to undertake a detailed examination of the Authority's responses to check if any information was found falling within scope of the request.

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 4 March 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. These focused on the searches and enquiries undertaken by the Authority to establish what information it held falling within the scope of the Applicant's request. The Authority provided submissions to the Commissioner.
9. During the investigation, the Authority was asked to conduct further searches of the complaints received on and around the date in question.
10. The Authority's submissions are considered below.

Commissioner's analysis and findings

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

Section 17 - Notice that information not held

12. 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, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
13. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not usually require a public authority to create

recorded information in order to respond to a request, or to provide information which is not held in a recorded form (e.g. from a person's memory).

The Authority's submissions

14. The Authority provided details of the number of complaints it had received for a three month time period. This equated to an average of 60 first stage complaints and 29 second stage complaints per month.
15. The Authority explained that all complaints are logged on its electronic system. The Patient Experience Manager (who manages the complaints team and is responsible for overseeing complaints received by the Authority) was contacted to ascertain whether the information was held in a way which could answer the requestor's question. It was confirmed that no information was held that would meet the terms of the request.
16. The Patient Experience Manager explained that there was no category of complaints for "wasted the public's time". Complaints around delayed response are categorised in a subjective way, i.e. the complainant might consider it a delayed response but, on the basis of targets, the response was on time. There was no way to identify what complaints had received a response within or outwith the target time. Some of these complaints are also for patients with non-emergency needs and there is no way to distinguish between these and emergency cases.
17. The Authority provided copies of emails to support its response.
18. The Authority was asked to obtain and consider the complaints received between 8 to 12 December 2021. It provided the number and categorisation of the complaints received for this time period, stating that only one complaint had been received on 8 December 2021. The one complaint received on 8 December 2021 was not in relation to time wasting, and so did not fall within scope of the request.

The Commissioner's conclusions on whether the requested information is held or not

19. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
20. Having considered all the relevant submissions, the Commissioner is satisfied that the Authority took adequate and proportionate steps to establish whether it held recorded information falling within the scope of the Applicant's request. The staff involved in assessing what information was held by the authority had experience and knowledge of the subject matter of the request, reducing the likelihood of error and misunderstanding in locating the information requested. Similarly, the Commissioner notes that the one complaint received on the day in question did not relate to the subject requested by the Applicant.

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.

Margaret Keyse
Head of Enforcement

22 March 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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

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).

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