

Decision Notice



Decision 182/2013 Dr Robbie Coull and Highland Health Board

Award of medical practice contract

Reference No: 201301179

Decision Date: 21 August 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

On 28 and 29 August 2012, Dr Coull asked Highland NHS Board (NHS Highland) for information relative to the award of a specific medical practice contract. NHS Highland responded and provided him with information, stating that it did not hold certain other information. The Commissioner carried out an investigation and found that NHS Highland had provided Dr Coull with all of the relevant information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information not held)

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

Background

1. On 28 and 29 August 2012, following correspondence in relation to an earlier, related information request, Dr Coull wrote to NHS Highland requesting additional information regarding the consideration and award of the contract for a specific medical practice. On 30 August 2012, Dr Coull also provided NHS Highland with a list of the information he believed it should hold.
2. NHS Highland responded on 9 October 2012. It provided Dr Coull with some of the information requested, stating that it did not hold certain other information.
3. On 18 October 2012, Dr Coull wrote to NHS Highland requesting a review of its decision. He referred to the list provided on 30 August 2012 and indicated that he did not believe the request to have been addressed in full.
4. NHS Highland notified Dr Coull of the outcome of its review on 19 November 2012. It confirmed that all of the relevant information it held had been provided to him and that no further information was held.



5. On 17 May 2013, Dr Coull wrote to the Commissioner, stating that he was dissatisfied with the outcome of NHS Highland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Dr Coull made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.

Investigation

7. On 3 July 2013, the investigating officer notified NHS Highland in writing that an application had been received from Dr Coull, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. NHS Highland was asked to justify its reliance on any provisions of FOISA it considered applicable, and in particular to explain the steps it had taken to identify and locate the information requested.
8. NHS Highland responded, providing submissions in support of its position that it did not hold any further information.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both Dr Coull and NHS Highland. She is satisfied that no matter of relevance has been overlooked.

Information held by the NHS Highland

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 certain 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. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an 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 Commissioner notes the submissions provided by Dr Coull, in which he provides reasons why he considers NHS Highland should hold further detailed information. He stated that a NHS Highland staff member had referred to the existence of specific notes, which would fall within the scope of his requests, at a meeting. In addition, he expected more to be held by way of an audit trail.
13. NHS Highland confirmed that the individual to whom Dr Coull was referring had been interviewed for the purposes of the investigation. They had reviewed their own records (where the notes would have been held), but could not locate the notes: they had not checked whether the notes existed at the time of the meeting referred to by Dr Coull. NHS Highland confirmed that notes of this kind would be destroyed routinely.
14. NHS Highland also explained the searches and enquiries it undertook to ascertain whether it held further information falling within the scope of Dr Coull's requests. It provided evidence of the outcomes of these.
15. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that NHS Highland interpreted each of Dr Coull's requests reasonably and took adequate, proportionate steps in the circumstances to establish what information it held and which fell within the scope of each request. Given the explanations provided, she is not satisfied that the notes referred to by Dr Coull should necessarily have been held when his request was received.
16. The Commissioner is therefore satisfied that NHS Highland was correct to give Dr Coull notice, in terms of section 17(1) of FOISA, that (with the exception the information it did provide) it held no information falling within the scope of part of his requests. In providing such information as it did, she is satisfied that it dealt with the requests in accordance with section 1(1) of FOISA.

DECISION

The Commissioner finds that Highland Health Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by Dr Coull.



Appeal

Should either Dr Coull or Highland Health Board 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
21 August 2013



Appendix

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.
- ...
- (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.
- ...