

Decision Notice 047/2021

Bookings of patient accommodation

Applicant: The Applicant

Public authority: Highland Health Board

Case Ref: 202001267



Scottish Information
Commissioner

Summary

NHS Highland was asked for the number of bookings made for patients to stay in Kyle Court patient accommodation on certain dates in 2018. NHS Highland said it did not hold this information. Following an investigation, the Commissioner was satisfied NHS Highland did not hold the information.

Relevant statutory provisions

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

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 11 July 2020, the Applicant asked Highland Health Board (NHS Highland) for the number of bookings made for patients to stay in Kyle Court patient accommodation by 30 May 2018 for the following dates:
 - 20 and 27 June 2018
 - 4, 11 and 25 July 2018 and
 - 1, 8, 15, 22 and 29 August 2018
2. NHS Highland responded on 10 August 2020. It told the Applicant it did not hold the information and that section 17 of FOISA therefore applied. NHS Highland explained that booking forms were only retained for one year and that some bookings were made by telephone only and it held no record of the dates of these calls.
3. On 12 August 2020, the Applicant wrote to NHS Highland requesting a review of its decision. He:
 - noted it had provided information in response to a previous request
 - questioned the comment that booking forms were not completed for all accommodation bookings
 - suggested booking forms may be added to medical records and
 - asked how long booking forms must be kept in terms of Data Protection legislation.
4. NHS Highland notified the Applicant of the outcome of its review on 16 September 2020. It confirmed its previous response that no information was held. NHS Highland explained why it had been able to provide information for a previous request and told the Applicant that, in line with Data Protection legislation, personal data were not kept any longer than necessary.
5. On 23 October 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of NHS Highland's review because he believed it held information that fell within his request.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Highland was invited to comment on this application and to answer specific questions. These related to how it had established if it held any information falling within the Applicant's request.

Commissioner's analysis and findings

8. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the Applicant and NHS Highland. He is satisfied that no matter of relevance has been overlooked.

Section 17 - Notice that information is not held

9. 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.
10. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not require a public authority to create 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).
11. In this case, the Applicant disputed NHS Highland's claim that it did not hold a record of the number of bookings made for patients to stay in Kyle Court by 30 May 2018 for specified dates in June, July and August 2018.
12. The question whether recorded information is held by a public authority is a factual question. NHS Highland was asked how it had interpreted the request and how it had established that it held no relevant recorded information.
13. NHS Highland said that it interpreted the request as looking for booking requests for patient accommodation at Kyle Court on the days specified. NHS Highland explained that the Accommodation Manager was asked for this information and had explained that most bookings were taken over the telephone; forms were only submitted for some bookings.
14. NHS Highland said it was policy that booking forms were only kept for 12 months to comply the Scottish Records Management Code of Practice and with the Data Protection Act 2018, which requires that personal data is not kept for any longer than is necessary. By the time the Applicant made his request, the booking forms had been destroyed.
15. NHS Highland later confirmed that, having checked the retention policy, booking forms were not specifically referenced in the policy. On further checking, NHS Highland explained that a previous manager informed the accommodation manager to keep the forms for one year.
16. An online search located two documents that set out the booking process and criteria, stating that a lot of the initial booking is conducted by telephone, followed up with a form. NHS

Highland was therefore asked to confirm whether it retained any form of electronic record that would include the information requested.

17. NHS Highland replied that all booking forms are sent by email, which are printed off. The emails are deleted, and the hard copy is kept for one year
18. The point raised by the Applicant that the information may be located within medical records was also put to NHS Highland. NHS Highland confirmed that booking forms would not be retained in an individual's health record and that there was no requirement for this.
19. NHS Highland was also asked if Kyle Court had its own privacy statement in case this told data subjects how long booking information would be retained. NHS Highland replied that there was no privacy statement on the booking form and all booking requests are initially processed by the secretaries of the consultants and the patient. The secretaries then send the completed form to the patient accommodation team to process accommodation. NHS Highland provided a link to its organisational privacy statement.¹
20. The Commissioner must decide whether NHS Highland complied with Part 1 of FOISA in refusing the request, i.e. whether NHS Highland was correct to notify the Applicant that it held no recorded information falling within the request. In doing so, the Commissioner must assess whether NHS Highland held recorded information when it received the Applicant's request showing the number of bookings made (by 30 May 2018) for the dates specified in the request.
21. 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.
22. Having considered all the relevant submissions, the Commissioner is satisfied that NHS Highland took adequate and proportionate steps to establish whether it held recorded information falling within the scope of the Applicant's request. The NHS Highland 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.
23. The Commissioner accepts it is reasonable to assume that the booking forms would not be retained by NHS Highland for longer than necessary, as required by data protection law. NHS Highland does not have a policy that suggests that such booking forms from the date requested (30 May 2018) should still be retained as of the date of the Applicant's request (11 July 2020). NHS Highland has confirmed its practice that the forms should not be retained for longer than a year. This practice suggests that the relevant forms would not be held by NHS Highland at the date of the request. It would also be reasonable to assume that there would be no requirement for NHS Highland to retain such booking information for a longer period of time: the booking information would be functional and used at the time to facilitate the accommodation process.
24. The Applicant suggested that relevant information may be found in medical records. NHS Highland confirmed that the booking information that the Applicant wanted would not be

¹ <https://www.nhshighland.scot.nhs.uk/Pages/YourRights.aspx>

retained in an individual's health/medical records. The Commissioner accepts that there would be no operational need to retain such information in a health record.

25. Two NHS Highland documents^{2 3} that are available online refer to the booking process and criteria. These forms suggest many of the initial booking may be conducted by telephone, followed up with a form. NHS Highland has explained this process of booking and also confirmed that it did not retain any form of electronic record. The Commissioner has received no evidence to doubt this.
26. The request is for the number of bookings made by 30 May 2018 for dates in June, July and August 2018. This is different from a request that asks for the bookings on the dates in June, July or August. Rather, it is asking for recorded information as of a certain date (30 May 2018). The previous request which resulted in information being disclosed to the Applicant was for actual occupancy status and confirmed the rooms that were occupied or not on the dates. The request at issue here would require access to information that shows the date the booking was initiated. This reduces the likelihood of information being held.
27. In all the circumstances, the Commissioner is satisfied, on the balance of probabilities, that NHS Highland held no recorded information that falls within the terms of the Applicant's request.

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 request made by the Applicant.

Appeal

Should either the Applicant or NHS Highland 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

7 April 2021

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<https://www.nhshighland.scot.nhs.uk/Services/Documents/Brochure%20for%20Kyle%20Court%20Oct%202020.doc>

³ <https://www.nhshighland.scot.nhs.uk/Services/Documents/Kyle%20Court%20Criteria.doc>

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.

...

- (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.

...

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