

Decision Notice 012/2022

Number of deaths caused by Covid-19 in Health Board area

Applicant: The Applicant

Public authority: Dumfries and Galloway Health Board

Case Ref: 202100780



Summary

NHS Dumfries and Galloway was asked about the number of deaths caused by Covid-19 within its area where this was the sole cause of death. NHS Dumfries and Galloway said it did not hold information which would fulfil the request.

Following an investigation, the Commissioner was satisfied that NHS Dumfries and Galloway 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 25 May 2021, the Applicant made a request for information to Dumfries and Galloway Health Board (NHS Dumfries and Galloway). The information request was in two parts, only the second part being the subject of this investigation. In the second part of his request, the Applicant asked:

Can you please provide the total number of deaths that occurred within the NHS Dumfries and Galloway Board, where a positive PCR Covid-19 test was taken within 28 days of the person's death AND Covid-19 was the sole cause of death listed on the deceased's death certificate.

Can you please provide this information by date (including a total for 2020 and 2021) from February 2020 to today's date (24/5/2021).

Can you please provide this information in 5 year age group bands.

2. NHS Dumfries and Galloway responded on 25 May 2021, but no response was provided to the second part of the Applicant's request as set out above.
3. On the same day, the Applicant wrote to NHS Dumfries and Galloway, requesting a review of its decision on the basis that it had not answered the second part of his request.
4. NHS Dumfries and Galloway informed the Applicant of the outcome of its review on 23 June 2021. It notified the Applicant, in line with section 17(1) of FOISA, that it did not record the information requested in the second part of his request and therefore did not hold it.
5. On 24 June 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of NHS Dumfries and Galloway's review because he considered this information was held by each of the NHS health boards in Scotland. The Applicant based this view on the fact that he had received this information from the other 13 Scottish health boards. The Applicant also considered this information to be a matter of public interest and so, under FOISA, it should be provided for the public record when requested.

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. On 14 July 2021, NHS Dumfries and Galloway was notified in writing that the Applicant had made a valid application. The case was 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. NHS Dumfries and Galloway was invited to comment on this application and to answer specific questions. These related to the nature of the searches carried out by NHS Dumfries and Galloway to establish whether it held recorded information falling within scope of the Applicant's request. Questions were also asked around whether there was any legal or good practice requirement placing an expectation on NHS Dumfries and Galloway to hold the information covered by the request.

Commissioner's analysis and findings

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

Scope of investigation

10. In his request for information and requirement for review, the Applicant made it clear that the requested information covered the health board area. However, in his application to the Commissioner, the Applicant stated that the information requested was restricted to deaths which occurred within NHS Dumfries and Galloway's hospital facilities.
11. As the Commissioner can only undertake an investigation into a public authority's response to an Applicant's request and requirement for review, the scope of his investigation in this case must be the number of deaths occurring with the NHS Dumfries and Galloway Board area. The Commissioner is satisfied that this relates to the whole area covered by NHS Dumfries and Galloway and the Applicant had not, at the time of his request or requirement for review, stipulated that he wished this to be restricted to deaths occurring in hospital only.

Section 17 – Information not held

12. 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.
13. 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.

Submissions from NHS Dumfries and Galloway

14. In its submissions, NHS Dumfries and Galloway confirmed that it had interpreted the Applicant's request as covering deaths occurring within the health board area. (As indicated above, the Commissioner agrees with this interpretation.)
15. NHS Dumfries and Galloway provided an explanation as to the information it held with regard to death certificates. NHS Dumfries and Galloway confirmed that it did hold relevant information in relation to hospital deaths, but that it did not see any death certificates relating to community deaths unless there was a specific reason that it should.
16. Furthermore, NHS Dumfries and Galloway submitted that it had a legislative duty to hold information relating to patient treatment, births and deaths occurring within hospital facilities, but has no legal or legislative requirement to hold any community death records (although, following a request from the Scottish Government, it did record and report on deaths in care homes).
17. NHS Dumfries and Galloway also explained that there was no internal or external guidance that stated that it must record Covid-related community death figures and it was never asked by the Scottish Government to provide such figures, only hospital and care home related deaths due to Covid.
18. In his application to the Commissioner, the Applicant commented on the fact that he had received the information covered by this part of his request from the other 13 Scottish health boards.
19. In response to this, NHS Dumfries and Galloway noted that the other health boards had sought clarification from the Applicant on whether his request was looking for all Covid-related deaths in the region or just hospital-related deaths. NHS Dumfries and Galloway did not believe it had any reason to seek such clarification in response to the request. It also advised that it had received a subsequent request from the Applicant where he specifically requested information on hospital-related deaths, and it provided information in full in response to that request.

Commissioner's conclusions

20. 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 lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
21. Having considered all of the relevant submissions, and the terms of the request and scope of investigation in this case, the Commissioner accepts that NHS Dumfries and Galloway interpreted the scope of the Applicant's request appropriately in this case. He also accepts, on the basis of the submissions received, that it took adequate and proportionate steps in the circumstances to establish what information it held.
22. Given the explanations and other submissions provided, whilst the Commissioner recognises that NHS Dumfries and Galloway would hold relevant information in relation to deaths occurring in hospital and care homes, he is satisfied that NHS Dumfries and Galloway do not (and did not, on receiving the request) hold the information requested by the Applicant to fulfil

all of the second part of his request. Therefore, the Commissioner concludes that NHS Dumfries and Galloway was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it held no such information. Although the Applicant believed the specified information would be held by NHS Dumfries and Galloway, the Commissioner is satisfied that this was not the case.

Decision

The Commissioner finds that Dumfries and Galloway 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 Dumfries and Galloway 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

25 January 2022

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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info