

# Decision Notice



Decision 016/2013 Mrs Ellen Scott and Lothian NHS Board

Information relating to the disappearance and death of a named individual

Reference No: 201202628

Decision Date: 14 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mrs Scott asked Lothian NHS Board (NHS Lothian) for information relating to the disappearance and death of a named patient at a specified hospital in 1987. NHS Lothian advised Mrs Scott that it did not hold any recorded information that would address her request.

Following an investigation, the Commissioner was satisfied that NHS Lothian did not hold any information falling within the scope of Mrs Scott's request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17 (Notice that information is 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

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1. On 19 October 2012, Mrs Scott wrote to NHS Lothian requesting information relating to the disappearance in 1987, and subsequent death, of a named patient at a specified hospital.
2. NHS Lothian responded on 12 November 2012, advising Mrs Scott that it did not hold the information she had requested. It explained that information relating to deceased patients is destroyed three years after the individual's death.
3. On 11 December 2012, Mrs Scott wrote to NHS Lothian requesting a review of its decision. Ms Scott expressed her surprise that no recorded information was held regarding the matter.
4. NHS Lothian notified Mrs Scott of the outcome of its review on 11 December 2012. It confirmed that it did not hold the requested information and informed Mrs Scott that any information that may have been held would have been destroyed in line with its Retention and Destruction Policy. It also advised that it had contacted the Lothian Health Service Archive, and could confirm that the Archive held no information relating to her request.



5. On 13 December 2012, Mrs Scott wrote to the Commissioner, stating that she was dissatisfied with the outcome of NHS Lothian'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 Mrs Scott had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. The investigating officer subsequently contacted NHS Lothian, 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 Lothian was asked to clarify the searches that had been undertaken in order to locate and retrieve any relevant information, and to explain its policy in relation to the retention and destruction of information of this nature.
8. NHS Lothian responded on 7 February 2013, providing submissions in support of its position that it did not hold the requested information.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mrs Scott and NHS Lothian and is satisfied that no matter of relevance has been overlooked.

### Section 17 of FOISA – notice that information is not held

10. Under section 17(1) of FOISA, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
11. In this case, NHS Lothian responded to Mrs Scott's requirement for review by stating that it did not hold the information that she had requested.
12. In its submissions to the Commissioner, NHS Lothian provided details of the searches it had undertaken in order to identify relevant information. NHS Lothian explained that it had undertaken searches within the appropriate Health Records Department, Clinical Governance Department and the Lothian Health Service Archive.



13. NHS Lothian also explained that before 2008 it did not destroy records of this nature, but the decision was then taken to destroy these records. The high volume of notes to be destroyed did not allow for individual destruction notes to be made. NHS Lothian also explained that all records to be destroyed are now done so three years after the individual's death.
14. NHS Lothian provided the Commissioner with copies of its policies and procedures on the retention and destruction of health records, and explained the retention policy operating in the Lothian Health Archive Service during the period when the patient disappeared.
15. The Commissioner has considered the submissions made by both Mrs Scott and NHS Lothian. Having considered the steps and searches undertaken by NHS Lothian and its explanation of why it does not hold the specific information sought by Mrs Scott, the Commissioner is satisfied that it does not hold any recorded information (and did not at the time of the request) that would fulfil the terms of Mrs Scott's request.
16. The Commissioner accepts that it was reasonable in all the circumstances for NHS Lothian to conclude that it did not hold any information sought by Mrs Scott. She is therefore satisfied that NHS Lothian was correct to give Mrs Scott notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of her request.

## DECISION

The Commissioner finds that Lothian NHS Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mrs Scott.

## Appeal

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Should either Mrs Scott or Lothian NHS Board wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**14 February 2013**



## Appendix

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### 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.
- ...