

Decision Notice 177/2019

CSO funding for NRS Generic Support: advice and assistance

Applicant: The Applicant

Public authority: NHS Greater Glasgow and Clyde

Case Ref: 201901076



Scottish Information
Commissioner

Summary

NHS GGC was asked for information to classify Chief Scientist Office (CSO) funding for NHS Research Scotland (NRS) Generic Support over a specified time period.

NHS GGC refused the request at review, but offered to assist the Applicant to reframe his request.

The Commissioner investigated and found that NHS GGC had complied with FOISA in responding to the request. This was because, as far as was reasonable, adequate advice and assistance had been available to the Applicant as required by section 15(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 15 (Duty to provide advice and assistance)

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 26 July 2018, the Applicant made a request for information to NHS Greater Glasgow and Clyde (NHS GGC). The information requested was information the Applicant believed he would need in order to classify the Chief Scientist Office (CSO) funding NHS GGC received for NHS Research Scotland (NRS) Generic Support by illness. He provided an indication of the breakdown and other kinds of information he was looking for.
2. On 30 August 2018, the Applicant emailed regarding the lack of response from NHS GGC, in effect making a request for review. No response was received.
3. The Applicant applied to the Commissioner who, on 15 November 2018, issued *Decision 184/2018* requiring NHS GGC to provide the Applicant with a review outcome by 31 December 2018.
4. NHS GGC responded on 31 December 2018, providing a review outcome. This informed the Applicant that, due to the way his request was framed and the way information was held, the cost of providing the information requested would be in excess of the limit set for the purposes of section 12 of FOISA. NHS GGC offered to provide the Applicant with advice and assistance to narrow his search, so that he could access the information he required.
5. On 26 June 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of NHS GGC's review because he did not feel he had been provided with advice and assistance in terms of section 15 of FOISA.

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 9 September 2019, NHS GGC 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 GGC was invited to comment on this application and to answer specific questions. These related to the steps NHS GGC had taken to provide reasonable advice and assistance to the Applicant.

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 GGC. He is satisfied that no matter of relevance has been overlooked.

Section 15 – Duty to provide advice and assistance

10. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. This duty has particular relevance to the application of section 12(1) of FOISA: where the cost limit applies, the authority should provide advice and assistance to allow the applicant to narrow the scope of their request to bring it within the limit.
11. The Applicant submitted that NHS GCC had failed to provide him with adequate advice and assistance to allow him to take his request forward. He made specific reference to the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code of Practice)¹ (Part 2, section 5.4.2). This section states that:
“Advice and assistance should be provided as soon as possible. The Commissioner is likely to be critical of any authority which takes an unreasonable length of time to provide advice and assistance in order to delay the applicant submitting a valid request.”
12. NHS GGC, in its review outcome of 31 December 2018, offered for senior members of Research & Development (R&D) staff to meet with the Applicant to discuss the work of R&D and how information was recorded, and to better understand the requirements of the Applicant with a view to helping him amend or narrow his request to produce information that would be helpful to him.
13. NHS GGC submitted that in early January 2019 it contacted the Applicant to arrange to meet with him to fulfil this offer. It submitted evidence to show that several modes of contact were offered to facilitate this meeting, e.g. face to face meeting, video conferencing or telephone conferencing.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

14. NHS GGC provided evidence to show that the Applicant suggested one date in January 2019, but that key R&D staff could not attend.
15. NHS GGC submitted that the Applicant was asked to come back with further dates that suited him for a meeting, in any format that was convenient to him.
16. NHS GGC submitted that no further communication was received from the Applicant with regard to this matter. It expressed regret that the Applicant did not reconnect with NHS GGC as this, in effect, frustrated the opportunity for NHS GGC to provide further advice and assistance.
17. NHS GGC submitted that it had met its obligations in terms of section 15 of FOISA, in offering to provide the advice and assistance.
18. During the investigation, the Applicant provided no further submissions to the Commissioner (although he was asked to comment on NHS GGC's offers of a meeting).

The Commissioner's findings on section 15(1) of FOISA

19. NHS GGC, in its review, offered to assist the Applicant to narrow or amend his request.
20. NHS GGC contacted the Applicant to try to arrange a meeting to do this and after one date suggested could not be accommodated, the Applicant was asked for further dates. No further dates were suggested by the Applicant. The Applicant was given the opportunity to comment on the adequacy of NHS GGC's engagement with him, but failed to do so.
21. In the circumstances, the Commissioner is satisfied that NHS GGC, so far as was reasonable, complied with its duty to provide the Applicant with advice and assistance as required by section 15(1) of FOISA. The offers of a meeting appear to have been perfectly reasonable in the circumstances, including both face-to-face and remote contact. The Applicant has offered no explanation as to why he believed otherwise and it is unfortunate that he made no attempt to engage with NHS GGC after offering one initial date for a meeting.
22. In situations of this kind, applicants should bear in mind that the refinement of a request such as this will (if it is to be effective) generally need to be a two-way process, involving the public authority gaining a better understanding of the applicant's requirements as well providing advice on how it might meet them. If an applicant is not prepared to engage on that basis, there must be limits to how far the authority can reasonably be expected to take matters forward on its own.

Decision

The Commissioner finds that NHS Greater Glasgow and Clyde 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 GGC 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

10 December 2019

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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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