

20th April 2023

BY EMAIL



Our Ref: FOI 1916

Dear ,

Your request for information was received 13th March 2023 and was dealt with under the terms of the Freedom of Information Act 2000. Please be advised that the Business Services Organisation (BSO) has now completed its search for the information you requested with regards to records of processing activities (ROPAs) relating to the Northern Ireland Electronic Care Record (NIECR).

Please find this information, below.

This is a FOI Request for copies of BSO's *current*, not past or future, "Records of processing activities" (ROPAs) relating to the Northern Ireland Electronic Care Record (NIECR).

GDPR Article 30(2) requires a Data Processor to maintain ROPAs. As BSO is acting as a Data Processor for each of the NIECR participant organisations then BSO is required to have ROPAs covering such processing as detailed in Article 30(2).

Further to the below, and as noted in the request, BSO must have a record of its processing activities in accordance with Article 30(2) of UK GDPR. The following is an extract directly from Article 30(2):

- (a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and, where applicable, of the controller's or the processor's representative, and the data protection officer;**

Privacy Notice - The data controllers for the NIECR system are:



- Belfast Health and Social Care Trust (BHSCT), Data Protection Officer, 1st Floor, Administration Building, Knockbracken Healthcare Park, Saintfield Road, Belfast BT8 8BH
DataProtection@belfasttrust.hscni.net
- South Eastern Health and Social Care Trust (SEHSCT), Information Governance Department, Lough House, Ards Community Hospital, 23 Church Street, Newtownards, BT23 4AS
informationgovernance@setrust.hscni.net
- Southern Health and Social Care Trust Information (SHSCT), Governance, 10 Moyallen Road, Gilford BT63 5JX
Foi.Team@southerntrust.hscni.net
- Northern Health and Social Care Trust Information (NHSCT), Governance Office, Causeway House, 8e Coleraine Road, Ballymoney, County Antrim, BT53 6BP
info.governance@northerntrust.hscni.net
- Western Health and Social Care Trust (WHSCT), Information Governance Office; Tyrone & Fermanagh Hospital, 1 Donaghane Road; Omagh; Co. Tyrone; BT79 0NS
Information.Governance@westerntrust.hscni.net

For further information on GP services and Out of Hours GP services please contact your local services directly.

Should you require further information on how to contact your local care providers, please contact Corporate Service Department, Business Services Organisation, 2 Franklin Street, Belfast, or email dpa.bso@hscni.net

In relation to the DSA, the BSO will act on behalf of each of the other signatory organisations who feed data into the NIECR. They will carry out the service of taking the data, matching the data to the service user using agreed message matching logic and presenting the data through the Concerto web portal to HSC and GP staff end users in accordance with the agreed Role Based Access and Consent (RBAC) model.

Each of the signatory organisations will be deemed a separate data controller unless specific data flows require them to be identified as either a joint controller or a processor.

(b) the categories of processing carried out on behalf of each controller;

- Personal data such as your address, date of birth, Health and Care number, hospital numbers, GP details.
- Encounters' – visits to hospitals and Out of Hours Centres, including clinics, inpatient stays, A&E attendances, plus appointments booked for the future.
- Referral letters, discharge letters and other clinical correspondence
- Medicines.
- Allergy information if recorded at hospital or with your GP.

- Illnesses (e.g., diabetes, heart conditions etc.).
- Treatments you are receiving; and
- Laboratory and radiology results.

(c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1), the documentation of suitable safeguards;

NIECR does not transfer any other personal data about you outside the UK. If the NIECR decides to transfer your personal data outside the UK, they shall ensure the provisions of Chapter V of the UK GDPR are complied with.

(d) where possible, a general description of the technical and organisational security measures referred to in Article 32(1) or, as appropriate, the security measures referred to in section 28(3) of the 2018 Act

From DSA - all organisations subject to this agreement will adhere to the HSC ICT Security Policy.

- All HSC staff are required to complete information governance training regularly
- Governance policies and procedures are in place; these are available on all of the Health Trusts' websites.
- All authorised staff who have access to NIECR have appropriate access levels for their role, not everyone who has access to the system can view your personal information. This is known as controlled access.
- A record is kept every time a member of staff accesses your information on the NIECR. Appropriate checks and audits may be carried out on this activity to ensure that only authorised staff are accessing personal information.
- There are security measures put in place to ensure a high standard of IT security across all HSC Services protecting them from all threats. These could be internal, external, deliberate, or accidental threats.

I hope that the information provided assists you. If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible or in any case within two months of the date of issue of this letter, as the BSO, along with all other public authorities are not obliged to accept internal review requests after this period has lapsed.

In the event that you require a review to be undertaken, you can do so by writing to

Information Governance Manager,
2 Franklin Street,
Belfast,
BT2 8DQ

If, following an internal review, carried out by an independent decision-making panel, you remain dissatisfied in any way with the handling of the request, you may make a complaint under Section 50 of the Freedom of Information Act, to the Information

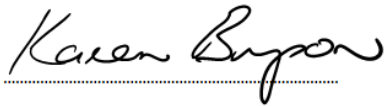
Commissioner's Office and ask that they investigate whether the BSO has complied with the terms of the Freedom of Information Act.

You can contact Information Commissioner at:

Website: www.ico.org.uk
Phone: 0303 123 1113
Email: casework@ico.org.uk
Post: Information Commissioner's Office
3rd Floor, 14 Cromac Place
Belfast
BT7 2JB

In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out. However the Commissioner has the option to investigate the matter at his discretion.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Karen Bailey', with a horizontal dotted line underneath it.

for Karen Bailey
Chief Executive

22nd May 2023**BY EMAIL**
**Our Ref: FOI 1916**Dear 

We are writing to you in response to your request for a review of the above referenced Freedom of Information (FOI) request, which review request was received by the Business Services Organisation (BSO) on 13th March 2023.

We can advise that a review panel was convened on 19th May 2023 to review this matter. This panel consisted of Ms Julie Erskine (Chair, BSO) and Ms Lesley Young (Director of Operations, BSO).

The review panel reviewed your original Freedom of Information request, the BSO's formal response to it, as well as the points raised within your request for a review panel to be convened.

The review panel recognised that there were two matters that required clarification:

- 1. the provision of names and contact details of Data Controllers within the NIECR**
- 2. the categories of processing for all the Data Controllers that BSO act for in relation to the NIECR.**

In relation to the first point above, the panel recognise that you are not satisfied with the list containing the names and contact details for the 5 Trusts supplied to you.

The panel are noted that GP Practices are also deemed as Data Controllers within the NIECR as per the Data Sharing Agreement (DSA). However, as there are over 300 GP Practices within Northern Ireland and that contact details for these is subject to change, it would not be viable to record these within the DSA. Instead,



a list of GP practices and their contact details can be located within the following link:

<https://hscbusiness.hscni.net/services/1816.htm>

This list, which is published on the BSO's website, is regularly updated. The panel will ask BSO to consider whether this link should be included within the DSA.

In relation to the second point above, the panel can confirm that there are 8 categories of processing as set out within the original response to you.

The panel can confirm that not every category of personal data will be accessed or otherwise processed by every data controller noted within the DSA. The NIECR operates on a strict role-based access model. Those who have access to the NIECR, will have access limited only to that which is necessary to discharge their duties. By way of example, as you have referenced with in your correspondence, community optometrists would not have access to "laboratory and radiology results".

The review panel hope that the outcome of this review panel has been of assistance to you.

If, however, following this internal review, carried out by an independent decision-making panel, you remain dissatisfied in any way with the handling of the request, you may make a complaint under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the BSO has complied with the terms of the Freedom of Information Act.

You can contact Information Commissioner at:

Website: www.ico.org.uk
Phone: 0303 123 1113
Email: icocasework@ico.org.uk
Post: Information Commissioner's Office
3rd Floor, 14 Cromac Place
Belfast
BT7 2JB

In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out. However, the Commissioner has the option to investigate the matter at his discretion.

Yours Sincerely,



Ms Julie Erskine
BSO Chair , BSO



Ms Lesley Young
Director of Operations, BSO

Business Services Organisation (BSO)
Freedom of Information (FOI) Team; [REDACTED]
By email: FOI.BSO@hscni.net

27 July 2023

Dear Sir/Madam,

Freedom of Information Act 2000 (FOIA)
ICO reference: IC-238716-P9M1
Complainant: [REDACTED]
Your reference: FOI 1916

We wrote to you previously to let you know that we have accepted this case for investigation. I have now been asked to investigate it.

You should now reconsider the way the BSO has handled this request and respond as detailed below.

ICO's approach

On receipt of a complaint under the FOIA/EIR, we will give a public authority **one** opportunity to justify its position, before issuing a decision notice. Please consider the guide for public authorities on our website for more information about how we handle complaints:

http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx

Section 1 – information held / not held

In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

It was stated in the internal review that: "The review panel reviewed your original Freedom of Information request, the BSO's formal response to it, as well as the points raised within your request for a review panel to be convened.

The review panel recognised that there were two matters that required clarification:

1. the provision of names and contact details of Data Controllers within the NIECR
2. the categories of processing for all the Data Controllers that BSO act for in relation to the NIECR."

However, the complainant raised two specific questions within their review request: "the information regarding the 5 Data Controllers detailed is the complete information contained in BSO's ROPAs regarding Data Controllers that BSO acts as Data Processor for regarding NIECR (and therefore relevant information regarding GP Practices, "other signatory organisations", any other Data Processors etc are missing from BSO's ROPAs for NIECR)." And "the provided "purposes" information is all that BSO's ROPAs hold regarding Data Controllers that BSO acts as Data Processor for, and therefore an accurate and complete definition of which categories of processing apply to which individual Data Controllers, or "types" of Data Controllers, is not detailed in BSO's ROPAs (as of 13th March 2023)."

They also pointed out that: "Regarding BSO's response about categories of processing (GDPR Article 30(2)(b)) only a single set of categories was provided. Do BSO's ROPAs for NIECR indicate that *all* these categories of processing apply to *all* the Data Controllers that BSO act for with regards to NIECR?

For instance, I would find it unlikely that "Referral letters, discharge letters, and other clinical correspondence" would apply to the Community Pharmacists that participate in NIECR (and who therefore BSO act as a Data Processor for). Likewise, I find it unlikely that "Laboratory and radiology results" would apply to Community Optometrists that participate in NIECR."

Given the above the BSO should now provide a better breakdown of categories of data controllers (not just the 5 GP's and a link) such as Pharmacists, Optometrists etc, and an explanation as to whether there is a signed DSA in place now, as well as a more comprehensive response to the issues raised.

The complainant has stated to the Commissioner that: "In response to my FOI request BSO did not even provide a list of categories of organisations for which it acts as a Data Processor with regard to NIECR, let alone provide details of the individual organisations." And "BSO acknowledged the fact that the 8 categories of processing do not apply to all of the Data Controllers but they still failed to provide that level of detail as required by GDPR – which refers to categories of processing that apply to each individual controller or, at the very least, each category of controller.

I also note that in the statement BSO, inadvertently, confirmed that (some) Community Optometrists are Data Controllers for NIECR – yet they failed to provide any details about these Controllers in their FOI Response."

The Commissioner understands that to provide a full and comprehensive list may be onerous on the BSO, however, it is your responsibility to provide the information in scope of the request wherever possible, and, or cite an appropriate exemption to potentially withhold some information.

In order to assist with this determination please answer the following:

- Have any searches taken place to establish if information in scope of the request is held?
- If no or inadequate searches were done at the time, please rectify this now and let me know what you have done.
- If the information were held, would it be held as manual or electronic records?
- Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
- Is there a business purpose for which the requested information should be held? If so, what is this purpose?
- Are there any statutory requirements upon the BSO to retain the requested information?

In summary you are required to provide a thorough response to the above questions in order to comply with your statutory obligations. The Commissioner will therefore challenge responses and assertions made which fail to satisfactorily address our questions and require a more detailed explanation. The Tribunal has also demonstrated that it is very critical of public authorities who fail to respond adequately to our enquiries. We therefore expect a public authority where appropriate to provide full details of their searches to support its conclusions.

What you need to do now

Where possible we prefer complaints to be resolved by informal means and we ask both parties to be open to compromise. It is also your responsibility to satisfy us that you have complied with the law. Our website has guidance which you should refer to in order to check whether your original response to the information request was appropriate.

This is your opportunity to finalise your position. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.

In any event, we need the following information from you to reach a decision.

- Detailed explanations for parts of the FOIA/EIR cited/not cited.
- Why relevant information is not held, if it is part of the normal course of business, or you are required/obliged to do so.

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions, but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.

For the avoidance of doubt, you should now do the following.

- Consider whether to change your response to the information request and let us know the outcome.
- Send us your full and final arguments as to why you think the exemption/s apply.
- Answer all of the questions in this letter.

Please provide your response within 10 working days of the date of this letter, that is by 10 August 2023, ensuring that you fully set out your final position in relation to this request. If you have any concerns, please contact me at icocasework@ico.org.uk (quoting the above reference).

Yours sincerely,



Lead Case Officer

Information Commissioner's Office

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice

We are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the Data Protection Act 2018 and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk). Please say whether you consider any of the information you send us is confidential. You should also say why. We will only withhold information where there is good reason to do so.

23rd August 2023

BY EMAIL

icocasework@ico.org.uk

ICO reference: IC-238716-P9M1

Complainant: [REDACTED]

Our reference: FOI 1916

Dear [REDACTED]

We are writing to you in response to your letter dated the 27th July 2023, wherein you asked for clarification as to the BSO response to the above referenced FOI request, as submitted by [REDACTED]

We can advise that the original review panel was re-convened on 15th August 2023 to review your request. This panel consisted of Ms Julie Erskine (Chair, BSO) and Ms Lesley Young (Director of Operations, BSO).

As a review panel, we reviewed the issues raised within your correspondence and agreed that a major difficulty faced by the BSO NIECR team is that they are managing a process which could be described as a fluid one.

A significant review of the supporting documentation, and in particular the Data Sharing Agreement and Data Mapping Exercise has been ongoing for some time. We have referenced this ongoing review in a number of pieces of correspondence with your office, and the ICO Belfast office has provided help and guidance to us as part of the review.

At the same time as the review has been carried out, we have had to provide responses to a number of FOIs and the subsequent follow up questions from the ICO in support of the FOIs received.

We have responded to the questions in as open and honest a way as we could, with the information that was current at the time. We would acknowledge that this has led to some level of confusion in respect of the roles of partner organisations and the users of the NIECR system.



After much discussion and redrafting we have now received the final guidance from our department of legal services and are now in a position to confirm that the Data Sharing Agreement is complete and ready to be issued to the Data Controllers.

The final version identifies the NIECR Data Controllers as only the 5 Health and Social Care Trusts and GP Practices across Northern Ireland.

The other system users (such as Community Pharmacists and Optometrists, both referenced in your letter) have been defined as Data Processors, and will be asked to sign a separate Data Processing Agreement.

This means we can confirm that all categories of processing will apply to all Data Controllers.

You also raised a concern about the provision of names and contact details of Data Controllers. Obviously, this is only an issue in respect of the GPs. We would contend that our initial proposed solution, namely a link to a website detailing GP contact details is the only realistic and practical way to communicate this information so that it remains as up to date as possible.

The provision of Primary Care in Northern Ireland is facing significant difficulties at the moment, with multiple GP practices closing and/or merging. As such, we believe that the link to the site quoted is more likely to be up to date than any list of GP Practices we could include in the Data Sharing Agreement.

We are aware that this is a change in definition from some of our earlier correspondence, however as we have explained this has been due to an extended and comprehensive review which has only recently been completed.

We hope that this further information helps provide the clarity as requested.

Yours Sincerely,



Ms Julie Erskine
BSO Chair , BSO



Ms Lesley Young
Director of Operations, BSO

[REDACTED]

From: icocasework <icocasework@ico.org.uk>
Sent: 12 October 2023 15:13
To: FOI BSO
Subject: ICO Case Reference: IC-238716-P9M1

Categories: [REDACTED]

12 October 2023

Case Reference: IC-238716-P9M1

Dear [REDACTED],

Further to your email of 31 August 2023. I have now spoken with the complainant about their dissatisfaction with the BSO's responses and as a result require some further clarification from the BSO.

1. From the launch of the NIECR in 2013 until the present day, has a valid, completed and signed DSA ever been in place, If so, on which date did it come into effect?
2. Having regard to the organisations listed in the incomplete 2016 DSA, was BSO acting as Data Processor for them at the date of the complainant's request? If so, on what basis, if there was not a valid DSA in place or as I understand, this still has not been finalised and signed off? If BSO was acting as a Data Processor for these organisations then did they *all*, whether individually or collectively, have a valid written contract in place with BSO to engage BSO as a Data Processor with regard to the NIECR?
3. Having regard to organisations such as Community Pharmacists and Optometrists, which BSO has indicated will become Data Processors at some point in the future, what was the role of these organisations in NIECR?
4. What was the lawful basis for the participation of these organisations in NIECR at the time of the request?

If there is anything else you would like to add or feel that is of importance to the case, please let me know.

Please reply at your earliest convenience and by no later than close of business on 27 October 2023.

Kind regards,



Lead Case Officer

Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. 0330 414 6281 ico.org.uk twitter.com/iconews

Please consider the environment before printing this email.

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice.

26th October 2023

BY EMAIL

icocasework@ico.org.uk

ICO reference: IC-238716-P9M1

Complainant: [REDACTED]

Our reference: FOI 1916

Dear [REDACTED]

We are writing to you in response to your letter dated the 12th October 2023, wherein you asked for clarification as to the previous BSO response to the above referenced FOI request, as submitted by the ICO.

We can advise that the original review panel was re-convened on 25th August 2023 to review your request. This panel consisted of Ms Julie Erskine (Chair, BSO) and Ms Lesley Young (Director of Operations, BSO).

Please find below the panel clarification as requested:

From the launch of the NIECR in 2013 until the present day, has a valid, completed and signed DSA ever been in place, If so, on which date did it come into effect?

The BSO has advised previously that there has been no signed Data Sharing Agreement in place. There was an attempt to address this in 2017, and we have signed agreements with several data controllers, but this process was not followed through with the GP Practices.

This weakness has been addressed, and the Data Sharing Agreement has been revised, agreed and issued to the HSC Trusts. We are working with the Department of Health to ensure that the 300 plus GP Practices receive and agree to the revised document. The ICO Belfast office has assisted and advised on this review.



Having regard to the organisations listed in the incomplete 2016 DSA, was BSO acting as Data Processor for them at the date of the complainant's request? If so, on what basis, if there was not a valid DSA in place or as I understand, this still has not been finalised and signed off? If BSO was acting as a Data Processor for these organisations then did they *all*, whether individually or collectively, have a valid written contract in place with BSO to engage BSO as a Data Processor with regard to the NIECR?

The requirements of UK GDPR Article 9(3) and DPA 2018 Section 11(1) are generally considered to be met by publicly funded/statutory health and social care organisations when fulfilling their statutory functions as set out in legislation e.g. Health & Social Care (Reform) Act (Northern Ireland) 2009 (as amended). However, as above, the BSO has now reviewed a DSA on behalf of, and in conjunction with, the relevant data controllers, and anticipate that this will be signed soon.

Having regard to organisations such as Community Pharmacists and Optometrists, which BSO has indicated will become Data Processors at some point in the future, what was the role of these organisations in NIECR?

During discussion around the review of the documentation referred to above in point 1, there was some time spent on the role of system users such as Community Pharmacists and Optometrists. However, the outcome of the discussion and the review was that both these groups are identified as Data Processors. The use of the system is being rolled out to Community Pharmacists on the basis that they are Processors.

What was the lawful basis for the participation of these organisations in NIECR at the time of the request?

The lawful basis for all data processing within NIECR is Public Task, as per Article 6 UK GDPR and Article 9 UK GDPR and Section 10 and Schedule 1 Part 1 Data Protection Act 2018.

Having reviewed the above questions, the panel feel that the BSO has substantially provided the above information in previous correspondence with a number of your colleagues, on a number of occasions, in relation to the NIECR. The panel wish to advise you that the BSO is willing to provide a timeline of said correspondence in due course, if you require it. This may provide you with any further clarification you require in relation to this matter.

Yours Sincerely,



Ms Julie Erskine
Chair, BSO



Ms Lesley Young
Director of Operations, BSO

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2023

Public Authority: Business Services Organisation

Address: 2 Franklin St
Belfast
BT2 8DQ

Complainant: [REDACTED]

Address: [REDACTED]

Decision (including any steps ordered)

1. The complainant has requested information from Business Services Organisation (BSO) relating to the Northern Ireland Electronic Care Record (NIECR). The BSO provided some of the requested information, however this was not provided in a timely manner within the statutory requirements of FOIA.
2. The Commissioner's decision is that on the balance of probabilities, the BSO does not hold any further information in relation to the request and as such, the BSO has complied with its obligations under section 1(1) of FOIA. However, the Commissioner finds that the BSO breached section 10 of FOIA, as it provided information outside of the 20-working day timeframe.
3. The Commissioner does not require the BSO to take any steps as a result of this decision.

Background

4. The complainant has raised a number of FOIA requests previously with the BSO and as a result of responses received has raised further questions. This notice follows on from IC-228172-N2K4, and IC-121566-H5T3¹ in which the Commissioner found that the BSO had failed to comply with sections 1 and 10 of FOIA.

Request and response

5. On 13 March 2023, the complainant wrote to the BSO and requested information in the following terms:

"This is a FOI Request for copies of BSO's *current*, not past or future, "Records of processing activities" (ROPAs) relating to the Northern Ireland Electronic Care Record (NIECR).

GDPR Article 30(2) requires a Data Processor to maintain ROPAs. As BSO is acting as a Data Processor for each of the NIECR participant organisations then BSO is required to have ROPAs covering such processing as detailed in Article 30(2)."

6. The BSO responded on 20 April 2023, It gave a list of five data controllers for the NIECR. The BSO also said that further information on GP services and Out of Hours GP services could be obtained from the local services directly. They explained that in relation to the DSA, they will act on behalf of each of the signatory organisations who feed data into the NIECR.
7. Following an Internal Review (IR) the BSO wrote to the complainant on 22 May 2023. It highlighted two points from the complainants IR request and provided further information in answer to those points.
8. During the Commissioner's investigation, he asked the BSO a series of questions in relation to the number of data controllers and or processors involved with the DSA and how they relate to the BSO's role as a data controller/processor; he also asked for the BSO to consider all aspects of the complainants IR request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024593/ic-121566-h5t3.pdf>

9. Following several further correspondences from the Commissioner requesting clarification and further questions raised from the IR response, the BSO confirmed all relevant information had been disclosed.

Scope of the case

10. The complainant contacted the Commissioner on 15 June 2023. They have said the main issues are around Data Controller/Data Processor relationships and a data sharing agreement. Their main issue is around the Data Controllers that were in place and their processors and sharing agreements at the time of their request. They believe the PA is being evasive. They concede the Data Protection side of their issues are now unlikely to be resolved (other than via legal proceedings).
11. The Commissioner considers that the scope of this case is to determine if, on the balance of probabilities, the BSO holds any further information in relation to the request.

Reasons for decision

Section 1 – information held/not held

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the BSO whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
15. The BSO has explained to the Commissioner that it 'has advised previously that there has been no signed Data Sharing Agreement in place. There was an attempt to address this in 2017, and we have signed agreements with several data controllers, but this process was not followed through with the GP Practices.' And 'This weakness has

been addressed, and the Data Sharing Agreement has been revised, agreed and issued to the HSC Trusts.'

16. The BSO further explained that: 'The requirements of UK GDPR Article 9(3) and DPA 2018 Section 11(1) are generally considered to be met by publicly funded/statutory health and social care organisations when fulfilling their statutory functions as set out in legislation e.g. Health & Social Care (Reform) Act (Northern Ireland) 2009 (as amended). However, as above, the BSO has now reviewed a DSA on behalf of, and in conjunction with, the relevant data controllers, and anticipate that this will be signed soon.'
17. The Commissioner asked the BSO what role Community Pharmacists and Optometrists played in NIECR to which they responded that both groups are identified as Data Processors and the system roll out is on the basis that they are processors.
18. The BSO has confirmed that the lawful basis for all data processing within the NIECR is Public Task as per Article 6 UK GDPR and Article 9 UK GDPR and section 10 and schedule 1 Part 1 Data Protection Act 2018.
19. The complainant has explained to the Commissioner that they feel the BSO has deliberately tried to frustrate their efforts to obtain information they have requested and stated, 'there are far more (alleged) Joint Data Controllers for the NIECR than these 322 mentioned by BSO – there appears to be somewhere in the order of 600+ (alleged) Controllers in total.' And 'No public information appears to exist that gives comprehensive details of even the categories of Data Controllers involved in NIECR, let alone a comprehensive list of the names of those Controllers – that was the reason why I raised this FOI Request with BSO in the first place.'
20. They went on to say that: 'In their FOI responses BSO have provided no information regarding Community Optometrists, Community Podiatrists, Community Pharmacists, or Independent Sector organisations. There are likely to be other categories of organisation, that I do not know about, that BSO also failed to provide information regarding.'
21. The BSO has explained that: 'After much discussion and redrafting we have now received the final guidance from our department of legal services and are now in a position to confirm that the Data Sharing Agreement is complete and ready to be issued to the Data Controllers. The final version identifies the NIECR Data Controllers as only the 5 Health and Social Care Trusts and GP Practices across Northern Ireland. The other system users (such as Community Pharmacists and Optometrists, both referenced in your letter) have been defined as Data

Processors and will be asked to sign a separate Data Processing Agreement. This means we can confirm that all categories of processing will apply to all Data Controllers.' And 'The provision of Primary Care in Northern Ireland is facing significant difficulties at the moment, with multiple GP practices closing and/or merging. As such, we believe that the link to the site quoted is more likely to be up to date than any list of GP Practices we could include in the Data Sharing Agreement.'

The Commissioner's findings

22. The Commissioner has considered the complainant's concerns, along with the BSO's explanations for how much information is held and disclosed in relation to the request.
23. It is the Commissioner's view that the BSO has provided the information that it holds that falls within the request and has also provided some further information outside the scope of the request.
24. The Commissioner understands the complainant's concerns regarding the information that they want. However, FOIA only looks at information that is held by a public authority. There is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold.
25. The Commissioner is satisfied that the BSO has carried out adequate searches for information that relates to the request. It has also provided additional information, beyond the scope of the request, to try to help the complainant.
26. The Commissioner is therefore satisfied that on the balance of probabilities, the BSO does not hold any further information within the scope of the request and as such, has complied with section 1 of FOIA.

Procedural matters

Section 10 – time for compliance

27. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

28. Section 10(1) of FOIA states that a public authority must comply with section 1(1) promptly and "not later than the twentieth working day following the date of receipt".
29. From the evidence provided to the Commissioner, the BSO did not provide information within the scope of the request, within the 20-working day timeframe. The BSO therefore breached section 10(1) of FOIA.

Right of appeal

30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed ...



.....

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF