

Request Reference: FOI/002/23

Published: 12 April 2023

i am making a freedom of information request regarding one [REDACTED] D.O.B. [REDACTED].

Reason for incarceration.

Date of same.

And if possible which court passed sentence

Response:

We refuse to provide the information requested under section 16(1) of FOISA.

Refusal Notice

In essence, we would need to confirm or deny that a named individual has been, or is, a patient of the State Hospital in order to provide the information requested.

The answer to *is an individual a patient or former patient of the State Hospital* can only have two answers, yes or no. Either answer discloses information about treatment or lack of treatment relating to mental health and as such constitute the medical history of an individual.

If the individual has been or is a patient then we will hold information that can answer the questions, but the information would be exempt from disclosure.

If the individual has not been a patient then we will not hold information relating to them. This would be notified using section 17 – Information not held.

If we were to provide either answer, we would disclose an element of the individual's medical history by virtue of the specific exemptions or notices provided.

An individual's medical history is

- Confidential under the common law duty of confidentiality.(Exempt under section 36(2)(b))
- Personal data with an expectation of privacy (if the individual is alive). (Exempt under section 38(1)(b) as disclosure would contravene a data protection principle)
- Personal data contained in a deceased person's health record (if the individual is deceased). (Exempt under section 38(1)(d))

All the exemptions above are absolute exemptions and therefore do not need a public interest test to be considered before their application.

Advice and Guidance

Information provided through the Freedom of Information (Scotland) Act 2002 is released to the public. This means that we will provide the same information to anyone who asks and to assist with this we publish most of our FOI response on our website for everyone to access.

Patients of NHS Scotland have an expectation that their personal information will be kept confidential by the organisations that hold it. They would not expect their admission or lack of admission to any hospital to be published.