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Date 02 September 2009

Our Ref 347402
Enquiries to Peter MacIntyre
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Dear Mr Wyllie

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 – REQUEST FOR INFORMATION

I am writing further to your request for information, dated 9 August 2009. Your request falls into two specific areas-

1. Information in respect of manuals, procedures and guidance used in the investigation and detection of fraud, and;
2. The results of reviews or inspections carried out in the past financial year examining the efficiency of CFS. You also noted that for the avoidance of doubt, your request did not extend to reports of the Surveillance Commissioner.

In relation to the first area, I can confirm that Counter Fraud Services does hold the information you have requested in the form of a Counter Fraud Services Manual. However, this information includes matters pertaining to covert surveillance techniques, such as the use of directed surveillance and covert human intelligence sources as authorised under the Regulation of Investigatory Powers (Scotland) Act 2000. It also includes information on interviewing strategies, techniques and the investigative tools used, including sources of information.

We consider these elements can be withheld under Section 35 (1) of the Freedom of Information (Scotland) Act 2002, whereby information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially:

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;

This is a non-absolute exemption, and therefore subject to a public interest test, as set out in section 2(1) (b) of the Freedom of Information (Scotland) Act 2002.

Counter Fraud Services has a statutory role conferred on them by Scottish Statutory Instrument 2008 No. 312, which came into force on 01 October 2008. This cites the function of the Counter



Chairman Bill Matthews
Chief Executive Ian Crichton
Interim Head of Service Peter MacIntyre

*NHS National Services Scotland is the common name of the
Common Services Agency for the Scottish Health Service.*

Fraud Services, as part of the Common Services Agency, to prevent, detect and investigate fraud or other irregularities in relation to all services provided under the National Health Service (Scotland) Act 1978.

In pursuance of this function, Counter Fraud Services are responsible for the prevention, deterrence, detection and investigation of fraud or other irregularities within, and against, NHSScotland and preventing losses to the public purse. We accept the public interest in being assured that bodies with such statutory functions have properly established procedures and protocols supported by effective guidance for their operation. We recognise the issue of public accountability, and the public interest, in being assured that adequate and proper arrangements are in place to investigate irregularities.

We have also considered the likely impact of releasing information about the investigative, detection and deterrence techniques deployed by Counter Fraud Services. We believe that the release of this information would make it easier for perpetrators of fraud to circumvent preventative measures, evade detection and avoid prosecution. This would substantially prejudice the exercise of our statutory function, and result in an increase in fraudulent activity against publicly funded bodies and a lower detection rate, resulting in a failure of our duty to protect NHSScotland from fraud.

We have concluded that, on balance, the public interest is better served by withholding the exempt information.

We have also concluded that the time taken to review and redact the Counter Fraud Services Manual would exceed the fee limit as set out in the Freedom Of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. The fee limit set by Scottish ministers is £600.

The Manual comprises 18 sections and a total of 849 pages and we have estimated that the time taken to review this, and redact exempt information, would total 99 hours. This work would have to be carried out by senior investigative staff at an hourly rate of £15 and therefore at a cost of £1485. As this exceeds the fee limit, we are not required, under section 12(1) of the Freedom of Information (Scotland) Act 2002, to provide the information.

However, you should be advised that if you narrow the scope of your request, Counter Fraud Services might be able to provide the information within the fee limit. In order for you to determine what that scope might be, we attach the Table of Contents for the Manual. Any reformulated request Counter Fraud Services receives from you will be treated as a new request for the purposes of the Freedom of Information (Scotland) Act 2002.

In relation to your second request for information, I have to advise you that, in accordance with Section 17 of the Freedom of Information (Scotland) Act 2002, this information is not held. There have been no external reviews or inspections carried out in the past financial year into examining the efficiency of Counter Fraud Services.

If you are unhappy with any aspect of how we have dealt with your request you can make representations to us, asking us to review the handling of your request. Please write, within 40 working days of the date of this correspondence, to:

Head of Corporate Affairs,
NHS National Services Scotland,
Gyle Square,
1 South Gyle Crescent,
Edinburgh EH12 9EB

You also have the right to apply to the Scottish Information Commissioner, who does not have to take up all cases he receives and will decide whether or not to look into your concerns further. The Commissioner can be contacted at:

Kinburn Castle,
Doubledykes Road
St Andrews,
Fife KY16 9DS

If you have any queries about this letter, please contact me at the above address.

Yours sincerely

Peter MacIntyre
Interim Head of Service

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