Our Ref: IM-FOI-2019-0430
Date: 1 April 2019

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

Thank you for your message of the 13 March 2019. The delay in reply is because of the development of a major failure in surgical practice at Edinburgh Royal Infirmary resulting in the possible deaths of 6 patients and there could be more as the infections can take months to show themselves. [https://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-47653641](https://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-47653641) By HSE procedures this almost certainly should be declared a major incident. There are fundamental systems failures behind these infections. These infection deaths are in keeping with the major failures in patient safety in NHS Lothian and the ongoing one serious incident a day to which this FOI relates. This is massive scandal and no-one is following the legal processes required. The FOI is on what is happening in relation to these incidents and the ASAP-NHS reporting of them to you on 28 November 2017. Since we reported them there will, by NHS Lothian's own data, have been a further c500 incidents. This will involve a vast number of reasonably preventable deaths. Police Scotland told us that a year ago COPFS had given the authorisation for an initial Police Scotland investigation but since then there has been nothing. COPFS is a government body run by two government ministers and has the same governance as NHS Scotland. They are both government departments are headed by the First Minister. There is an extreme conflict of interests. COPFS needs to stop interfering with police investigations and refer the matters of the NHS incidents and deaths to a lawful independent prosecution service.

Yes you are correct on the FOI questions are on what has happened with the original complaint 2017 1182-0665. It is:

1. What has happened on the investigation into the 100 incidents in 100 days?

In terms of your request, we are unsure as to what you are referring to in respect of ‘100 incidents in 100 days’, however, we have based our response on the 50 Serious Adverse Event Reports (SAERs) relating to the NHS that have been provided to Police Scotland for examination to determine any criminality.

The current position is that we are under a review process and COPFS have been asked to gather information around any deaths reported to them that relate to the 50 SAERs.

Upon all the information being reviewed and collated we will then determine whether an investigation is required.
2. What has happened on Police Scotland or an independent police service investigation into the Lord Advocate and the Solicitor General for a breach of section 5 Police Police and Fire Reform (Scotland) Act 2012? They are always Scottish Ministers and so are prohibited from directing Police Scotland.

3. What has happened on the Police Scotland investigation of HSE for its failure to comply with section 18 of the Health and Safety at Work etc Act 1974? This is the requirement that HSE ensures that the Act is complied with and in this case that patient safety is ensured. There has been major development on this in that HSE announced on 1 March 2019 that it would now be the regulator of patient safety in Scotland. For the last 7 years unlawfully patient safety has not been regulated in Scotland. During that time there will have been about 15,000 reasonably preventable premature deaths in Scotland. HSE has been doing nothing in this period and has allowed NHS Scotland to break the law on once again a massive scale. It would be difficult to find a bigger scandal than having an unregulated NHS.

So they are the questions. These were needed so that anyone can determine if in the case of the above 3 issues whether: Was the correct judicial process available and selected? How was due judicial process followed. If it helps you could split the three issues. As you will appreciate these are issues if the highest public concern.

In respect of questions 2 and 3 and as per the answer provided in question 1, Police Scotland are not currently investigating.

Again, to explain, pending a review of the information between ourselves and COPFS, in relation to the 50 SAERs that were provided to us, if any criminality was determined then Police Scotland may be required to investigate and this would be upon direction of COPFS.

Should you require any further assistance please contact Information Management - GLASGOW on 01786 895864 quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions. Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision.

You can apply online, by email to enquiries@itspublicknowledge.info or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.
As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information Disclosure Log in seven days' time.