

21.04.20

14 Deputy M.R. Higgins of the Minister for Health and Social Services regarding hospital records (OQ.102/2021):

Will the Minister advise Members what process a member of the public must follow to get their complete hospital records in good time; is it his assessment that current service delivery in this area is acceptable, explaining why if so and, if not, explaining why that is the case?

The Deputy of St. Ouen (The Minister for Health and Social Services):

A member of the public is able to make a subject access request for their hospital records via the online form on gov.je or via a paper form available at outpatient reception or via email to H.C.S. Information Governance. The identity of the applicant or their authority to apply on behalf of another individual is validated prior to the request being processed. Delays can occur when the records are significant in volume or complex or the records are in clinical use as healthcare has a higher priority or H.C.S. Information Governance is not provided with adequate information, the scope of the request and the clarification. Nonetheless, the average time taken to disclose hospital records in 2020 was 28 days, which is in line with the initial 4-week timescale set out in the Data Protection (Jersey) Law 2018.

3.14.1 Deputy M.R. Higgins:

I might add that the Minister's statement about response times varies considerably from the many emails and conversations I have had with people dealing with the department. Can he tell me then, if someone writes to the group medical director, which a number of people have, asking for their records and in fact they have been in communication with him, why does he not respond to their emails and their letters and tell them that he cannot do it this way, it has to go through the subject access route request? Many people are being left without their records. Will the Minister explain, does he think the group medical director should be responding to people if they ask for their records and tell them what should happen?

The Deputy of St. Ouen:

The Deputy is asking me about the actions of another individual and he has not given me an opportunity to seek the answers from that individual. I would have thought that sort of request would have found its way to the relevant people who provide the records and process the requests. That is all I can say at the moment.

[12:00]

3.14.2 Senator S.C. Ferguson:

Does the Minister not understand that I think probably Deputy Higgins and I both know of cases where individuals have had to go to court to get a subject access request agreed and get the information. Or in some cases it has taken 2 or 3 years to get the subject access request complied with. Will the Minister look at this and just improve the efficiency of his department rather than let them sit there and refuse to issue the documents, which are the subject of the subject information request?

The Deputy of St. Ouen:

There is an appeals process, which goes first to the Jersey Office of the Information Commissioner and can ultimately end up with the courts. If there have been court judgments then we can draw from those if there is any further refinement of processes that need to be made. We are also

subject to the guidance issued by the Information Commissioner. As I have said, the average time taken to disclose records is 28 days. There will be times when the situation is complex and it has been longer. There will be issues taken up I am sure about perhaps records that cannot be disclosed. Those would be the reasons why there is a continuing discussion over months and perhaps, as the Senator says, years. But I am satisfied that we are complying with the legislation.

3.14.3 Senator S.C. Ferguson:

Would the Minister like to provide a list of a number of subject access requests and the time taken? If the average is 28 days, does that include several at 2 days and one or 2 at 4 years. There are cases like this. It is questionable whether the people in Health, the civil servants, should be able to deny a subject access request for records when most civilised countries will comply more promptly to provide the information. Will the Minister just look into this and start sorting it out rather than just saying it is only going to take 28 days. I am sorry, it is not good enough, Minister.

The Deputy of St. Ouen:

I do not imagine that the response to the subject access request in any case took 4 years. I feel confident that what has happened in instances like that is that a response was provided in due time, as soon as it was possible, but the response has not been accepted and further discussions took place. That is a process that can either stay within the department or, if agreement is not reached, it can go through the statutory processes of appeal. But it is not the case that it took 4 years to respond to a request.

3.14.4 Deputy M.R. Higgins:

How would the Minister respond to a statement that the delays in giving these records to patients is designed to prevent those patients bringing actions in law against the department for negligence or other things? By delaying responses or having to have to go back for repeated documents, they are trying to basically exhaust the time period before a person can bring a legal action. Does the Minister accept his department is deliberately obstructing people getting information to get legal redress for medical negligence, for example?

The Deputy of St. Ouen:

The Deputy began by asking me how I would respond and that is an entirely hypothetical question unless and until he can provide any concrete examples of deliberate malfeasance in that way. I have no evidence that my staff are behaving in that way. But they are exercising their duties under the Data Protection (Jersey) Law.

Deputy M.R. Higgins:

Not even doing that.