

2021.10.05

4 Senator S.C. Ferguson of the Minister for Health and Social Services regarding the timing of responses to Subject Access Requests (S.A.R.s) by the Department of Health and Community Services (OQ.205/2021):

Will the Minister advise whether there have been any delays in response time and provision of information by the Health and Community Services Department to subject access requests; and, if so, will he explain the cause of any such delays?

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

I will call subject access requests S.A.R.s. As of 1st October this year 241 S.A.R.s have been received by the Health and Community Services Department during 2021. Of these 241, 10 - that is just over 4 per cent - were or will be disclosed outside of the 84-day timeframe allowable within the relevant legislation. Of those 10 S.A.R.s that will be disclosed outside of the timeframe, 7 have already been disclosed and 3 are waiting on harm checks prior to their disclosure. The S.A.R.s that will be disclosed outside of the timeframe are either Children's Services or mental health records and, as such, are often significant in volume or require redaction prior to disclosure to reduce the impact on the privacy of third parties and/or they require harm checks. Some medical record requests are also voluminous and may be in clinical use when requested. Clinical use has to take priority and this can cause delays to the processing of the request.

4.4.1 Senator S.C. Ferguson:

Is the Minister not aware that H.C.S. (Health and Community Services) has an appalling record in replying to subject access requests; Dr. Alwitry being a prime example. Does he not think that as Minister he should investigate properly the reasons for this?

The Deputy of St. Ouen:

I do not agree it is an appalling record. As I said, 4 per cent of those were unfortunately disclosed or are being disclosed outside of the timeframe allowed by the legislation, so that is not appalling. Furthermore, I have ensured that there are very good reasons, which I have explained, that they are disclosed outside of that timeframe. That is significance in volume, they require redaction to reduce the impact on the privacy of third parties, or they require harm checks because some people who are seeking these records are, in themselves, very vulnerable and we have a duty of care towards them.

[10:45]

4.4.2 Deputy K.F. Morel:

The Minister mentioned 84 days, which appears to be approximately 3 months, which seems a large amount of time to respond to subject access requests. Does the Minister believe that a lack of digitisation of records, not just medical records but also other records in the Health Department, is contributing to the delays? Whether it is just in the 4 per cent he mentions but also overall taking 3 months in order to respond?

The Deputy of St. Ouen:

Yes, that is very much the case. That heavy bulky paper records which have to be trawled through do just build in delays. When we move to digital records I am sure the accessing of those records will be easier. But far and away the majority of these S.A.R.s are responded to at an early date. The difficulties arise only in the minority of cases, for reasons that I have stated.

4.4.3 Deputy K.F. Morel:

The Minister mentioned when we do move, would he enlighten the Assembly as to when will the department move to digital records?

The Deputy of St. Ouen:

Yes, I can. That is part of the notes I had on the Deputy's own question later. Paper records are going to be scanned into a dedicated platform, and this is called the "electronic patient record" within which there is an electronic data management system. The outline business case is complete and approved. A full business case needs to be drafted but first a procurement exercise must be completed. The procurement will be completed before the end of this year and we expect the full business case to be completed in quarter one of next year. Then it will take 18 months to scan all the hospital records, I am advised. I hope that helps.

4.4.4 Deputy M.R. Higgins of St. Helier:

The Minister said only 4 per cent were not answered with 84 days. Will the Minister tell Members what the actual normal date is for a subject access request to be answered? It is considerably less than 84 days; will he please tell Members?

The Deputy of St. Ouen:

I do not have a figure that has worked through and produced a mean, but the fact is that 96 per cent of them are answered within the timeframe allowable within the relevant legislation. I am sure that the majority of them, perhaps being the simpler requests, are answered at a very much earlier stage.

4.4.5 Deputy M.R. Higgins:

If my memory serves me correct, and I may be wrong, but it is certainly lower. It is 40 days or less for a data protection answer to be given. Your department, Minister, is one of the worst on the Island for doing it. Many people who wish to take action against the hospital, let us say for medical negligence, have been denied records even after 84 days. What do you answer to that?

The Deputy of St. Ouen:

I am sure the Deputy will be aware of the complexity of hospital records, which in the case of somebody who has lived locally for many decades in the Island will date back perhaps 80, 90 years, and there will be voluminous records. Some of which might be relevant, some not. This could well be the reason why it is difficult within H.C.S., and there is a difference with other departments. Data protection legislation does provide for a timeframe with extensions up to 84 days after which it is permissible for applicants, if they have not received their records, then we are in breach of the legislation at that stage and matters can be taken up with the Information Commissioner. I know they regularly are. We are in good contact with the Information Commissioner, who does challenge H.C.S. and is aware of the difficulties.

4.4.6 Senator K.L. Moore:

Last week I received an answer to a S.A.R. that I had put in on behalf of a constituent. It came in just under the 3-month overdue mark and did not adequately answer the question. I mention that incidentally. What I did notice in receiving that response, however inadequate it was, was that it uses an additional platform, one that I had never seen before called Egress, which meant that the person receiving the response has to log into it. The question is: why, when we are supposed to be moving to a slimmed down, simple to use digital world, has the department chosen to add an

additional layer of complexity in providing information to members of the public? Has this slowed the process down somewhat?

The Deputy of St. Ouen:

I will happily take that up with the Senator. Do I understand that the applicant was being asked to log on to a digital system for records, in which case I am not aware of the detail of how that individual case may have been answered? But I undertake I will take it up with the Senator, if she wishes to pass on details.

4.4.7 Deputy R.J. Ward:

The Minister talks about a timeframe. How does he monitor whether simple cases are getting extended simply because his department can use that timeframe? How does he monitor the effectiveness of responses? Does he see that digital records in the future would bring down that statutory time of 84 days maximum? If so, will he be bringing that change to legislation once things are digitised?

The Deputy of St. Ouen:

I know my staff take very great care over all applications. They are really exercised by the difficulties in ensuring that the more complex records are released safely and thoroughly and in time. The simpler records I am sure that they will attend to very quickly, as quickly as they can, within a reasonable time, because they are simpler to do. There is no reason why they should be left outstanding. It is the few more complex ones that take up their time that create the difficulty. As to the change in legislation, that is possible. One will have to allow a bedding-in period to see how this works but if it is feasible to reduce, though I imagine this timeframe set out in legislation governs not just H.C.S. but all government departments, indeed all Island data protection issues. It will be for the Minister of the time, and this probably does not come under H.C.S., but whoever has Ministerial responsibility for data protection will need to keep this in mind and consider changes in the future.

4.4.8 Deputy R.J. Ward:

The Minister mentioned that if the 84 days is not reached he can go to the Data Commissioner. Can I ask the Minister what support is given to people to pursue the problems that they face? People who may be vulnerable, people may be, to put it simply, fed up with the system that they are engaged with and may just give up. So what support is in place and does he feel that that support to access the system is adequate?

The Deputy of St. Ouen:

We, in the department, support these applicants. This is not an antagonistic issue. This is a legal right that they are entitled to and we provision that. We will work with those. But in addition, we have heard from various Members in this questioning that they are supporting various applicants. The Information Commissioner will also be on hand to assist, the Citizens Advice, and I am sure there are various sources. But I would urge anyone who feels they are having difficulty to reach out to all those various sources of help.

4.4.9 Senator S.C. Ferguson:

I think the Minister is living in a different universe to me. The data protection rules say one month. Dr. Alwitary had to go to court. I have another constituent who has had to wait some years. Will the Minister provide the States with a list of subject access requests over the past 5 years, together with

the time taken to reply and identification of any rejected and the reasons why they have been rejected?

The Deputy of St. Ouen:

I am willing to discuss that with the Senator but my immediate thoughts are with 241 requests thus far in this year, so there may well be 300 each year, if I was to divert my staff into trawling through 5 years' records - perhaps up to 2,000 records - with that sort of data, when we know that 96 per cent of this year's records were released within the timeframe allowable what value is that? If the Senator has specific problems I am willing to speak with her. But I think diverting staff from important work to produce that sort of data, would she please try and meet me or we will chat to persuade me why that might be necessary?

Senator S.C. Ferguson:

Perhaps the Minister would like to use one of his myriad of managers to look at this.

The Bailiff:

No, I am sorry, Senator, that was a final supplementary and the Minister has answered it, so that does end this question.