Complaint 39xxx4 - about the MSD refusing to provide certain information under the Official Information Act 1982 (OIA), upon my request of 1 Oct. 2014; your final opinion dated 14 Nov. 2017; non delivery of remaining information

Dear Ombudsman Mr Donnelly, dear Bxxxxx Xxxxxx

Thank you for your email and letter dated 14 Nov. 2017, with which you provide me with your final opinion on my complaint, relating to the unsatisfactory responses by the Ministry of Social Development (MSD, the Ministry), of 26 Feb. 2015, to my original OIA information request dated 1 October 2014. I read that you intend to now ‘close’ the file.

I regret that the matter is still not fully resolved, as some matters appear to have been overlooked, and as I have also not received the further particular information from MSD, that you had informed me of earlier - in your provisional opinion, dated 24 Oct. 2017. That is the additional information, which you considered, the Ministry had agreed with your Office, would be made available to me in response to original OIA requests 2, 4 and 7.

Overlooked aspect of my remaining concerns

I have noted your comments and your formed final opinion in regards to my complaint regarding the response by MSD to ‘Request One’, ‘Request 3’ and ‘Request 6’, in my OIA request dated 1 Oct. 2014. Your comments are of course also in response to my further comments and expressed concerns that I sent you with my letter date 28 October 2017.

Some of your comments in your final opinion appear to have overlooked what one of my remaining main concerns was. I may quote the relevant parts of your final letter.

In your final opinion you wrote under ‘Request One – on site service provider addresses’, being in regards to comments I made in my last letter:
“You note that no website links were provided by the Ministry and that you do not accept section 18(d) and (g) are applicable.” You also wrote: “I note that the Ministry did provide you with the providers’ addresses and that you have in fact accessed the on-site delivery address information on-line”. “I confirm my final opinion is that the Ministry’s refusal was
justified. I will, however, note your point to the Ministry that you were not referred to the existence of websites, nor provided with links (and that this would have been a more helpful response).”

Under ‘Request 6 – on-site services delivery addresses’ you wrote in regards to my comments in my letter of 28 October 2017:
“You have noted that some of the providers do not have websites or have websites that are not helpful, although it appears that your last checks may have been some time ago.”

I read also: “In respect of the websites, I will, again, note to the Ministry that it would have been more helpful for the Ministry to refer you to the existence of websites (and provided links where possible).”

My further comments for clarification

This is of course all appreciated, but in my response to your provisional opinion I had on 28 Oct. also written the following (at the end of my comments in response under ‘Request 1...’):
“Last not least, I note, that the Ministry did in its response of 26 Feb. 2015 not follow its obligation to inform me pursuant to section 19 OIA that the information was publicly available, as it now claims in reliance on the provisions in section 18(d) OIA. Nor did it do the same in respect of a refusal now argued as justified pursuant to section 18(g). No way how this may be attempted to be explained away, the Ministry was in breach of the OIA.”

On page 5 of my letter dated 28 October, under ‘Request 6...’, I also wrote the following:
“I again ask you to consider, that MSD never provided any website addresses or links to such in the information provided in the first place, nor did it mention that the on-site addresses could be found on websites, hence it seems unreasonable, to later tell people, that the information is publicly available, even when in some cases it evidently is not so. It seems unreasonable to tell people who request such specified information to spend hours or days doing online searches, whether they have access to a functioning computer and internet, or not. If MSD is so certain that the information is publicly available, it should have pointed this out in the first place, and provided some information on how it may be accessed.”

And - more importantly - I also wrote the following:
“Last not least, I again note, the Ministry did in its response of 26 Feb. 2015 not inform me as per section 19 OIA, that the information would be publicly available, and that it had refused the information pursuant to section 18(d). In its response dated 24 April 2014 the Ministry only used section 18(g) to refuse information on providers’ staff roles and qualifications.”

Hence, it remains to be my view, based on the relevant provisions in the OIA, that MSD had a responsibility to point out, that the information was publicly available, in their response to me, dated 26 February 2015. While it would of course have been ‘helpful’ to have had a mention of websites that exist, and perhaps even have links presented, the MSD had an obligation to point this out, as that is what the statute law requires them to do. MSD did not do this in their information response, and must be advised that they must in future do so, as that is what the law requires them to do in such circumstances.

MSD have up to this day not provided remaining information

On page 5 of your provisional opinion letter of 24 Oct. 2017, under the heading ‘Resolution and my provisional opinion’, you considered that issues discussed in respect of my information requests 2, 4 and 7 have upon further consultation been ‘resolved by the
**Ministry’s agreement to release to you the further information it has provided to this Office**. Hence you had only invited my comments on your provisional opinion in respect of requests 1, 3, 6 and 11 (by 14 Nov. 2017), before you were going to form your final opinion.

I must – with some concern – inform you, that I have up to this date not received any further information from MSD upon my original request points 2, 4 and 7 since the initial information response by the Ministry dated 26 Feb. 2015.

The only additional information that MSD have so far sent me is the now admittedly ‘out of date’ ‘Guide for Designated Doctors’, published in 2007 or 2008, which I received by email from MSD at 16.01h on 8 Nov. 2017, from a person by the name of ‘Mary’ in their department or section ‘Ombudsman and Privacy Complaint Services’.

That ‘Guide for Designated Doctors’ was part of information, which I had requested information on, particularly where it could be found, when I made my original request on 1 October 2014. This was while I had actually requested further, additional information than that, on advice, guidance and so forth, which MSD had presented to medical practitioners, Designated Doctors and so forth.

So I can confirm having received that particular document, which I had also requested with another information request, which is now under review by your Office, under the separate case reference 44xxx8 (going by the number quoted in your final opinion on this matter). It is information that fell under ‘Request 11’ in my OIA request to MSD of 1 Oct. 2014.

Hence this cannot be the additional information I was told I can expect in your provisional opinion. I note though the following comments you have made in your letter of 14 November 2017, under ‘Final opinion’:

“I now confirm as final the opinions expressed in my letter of 24 October 2017. I have concluded my investigation and review. I will close the file once I have had confirmation from the Ministry that they have release the information discussed in respect of requests 2, 4 and 7.”

Thus I hope that this information will not be forgotten and that MSD will provide this soon. I appreciate that due to the change in government, and a new Minister being in charge of MSD, possibly also being advised under a ‘no surprises policy’, that this overdue response may perhaps be delayed for such reasons.

While I remain disappointed about your continued refusal to look deeper into the conduct of Dr David Bratt, I do hope, that this file will not be closed until the above has been resolved.

With thanks for your acknowledgments, and with kind regards

Xxxxxxx Xxxxxx

**Attachment to email carrying this letter:**