

# Decision Notice 003/2022

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## NHS Recovery Plan – failure to respond

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**Applicant: The Applicant**

**Public authority: Scottish Ministers**

**Case Ref: 202101463**



Scottish Information  
Commissioner

## Summary

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The Applicant asked the Scottish Ministers (the Ministers) for previous drafts and versions of the NHS Recovery Plan. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Ministers failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the Ministers to comply with the requirement for review.

## Background

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1. The Applicant made an information request to the Ministers on 26 August 2021.
2. The Ministers did not respond to the information request.
3. On 30 September 2021, the Applicant wrote to the Ministers in respect of their failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 25 November 2021, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The following day, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
7. The Commissioner received submissions from the Ministers. These submissions are considered below.

## Commissioner's analysis and findings

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8. The Ministers acknowledged that they had failed to respond to this request or requirement for review within the statutory timescales. The Ministers apologised and recognised that the handling of this request has fallen short of the required standard. The Ministers explained that at the time of receiving the request and requirement for review, they were dealing with a high volume of work and, due to pressures from other core business work it has taken longer than expected to finalise a response.
9. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
10. It is a matter of fact that the Ministers did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
11. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
12. It is a matter of fact that the Ministers did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

13. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Ministers failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21. Noting that the Ministers have confirmed that a review is in progress, the Commissioner would urge that this is completed, and the outcome communicated to the Applicant as soon as possible.
14. The Commissioner recommends that the Ministers consider whether it would be appropriate to apologise to the Applicant for their failure to comply.

## **Decision**

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The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, the Ministers failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) of 21(1) of FOISA.

The Commissioner requires the Ministers to respond to the Applicant's requirement for review by **28 February 2022**.

## **Appeal**

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Should either the Applicant or the Ministers wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

## **Enforcement**

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If the Ministers fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Ministers as if they had committed a contempt of court.

**Claire Stephen**  
**Deputy Head of Enforcement**

**13 January 2022**

**Scottish Information Commissioner**

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