

# Decision Notice 055/2022

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**Pay rises for employees administering life-saving care without patient consent – failure to respond**

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**Applicant: The Applicant**

**Public authority: Lothian Health Board**

**Case Ref: 202200045**



Scottish Information  
Commissioner

## **Summary**

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The Applicant asked Lothian Health Board (NHS Lothian) for information about recorded incidences of employees awarded a pay increase for resuscitating or supplying life-saving equipment to a patient without the patient's consent, between 12 November 2018 – 12 November 2021.

This decision finds that NHS Lothian failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

## **Background**

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1. The Applicant made an information request to NHS Lothian on 12 November 2021.
2. NHS Lothian responded to the information request on 25 November 2021.
3. On 3 December 2021, the Applicant wrote to NHS Lothian requiring a review of its decision.
4. The Applicant received a response to her requirement for review on 12 January 2022.
5. The Applicant wrote to the Commissioner on 12 January 2022, stating that she was dissatisfied with NHS Lothian's failure to respond to her requirement for review within the timescale allowed by FOISA and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 4 March 2022, NHS Lothian was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from NHS Lothian.

## **Commissioner's analysis and findings**

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8. 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. This is subject to qualifications which are not relevant in this case.
9. It is a matter of fact that NHS Lothian did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
10. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
11. In its submissions to the Commissioner, NHS Lothian advised that the Applicant's request for review was received on 3 December 2021, with the period for responding falling over the Christmas holiday period, when limited staff resources were available to provide the response.
12. NHS Lothian also submitted that staff resources available to deal with the request were further limited by the Applicant's requirement that only female members of staff deal with her request.
13. On 11 January 2022, NHS Lothian apologised to the Applicant for the delay in responding to her requirement for a review. It issued the response on 12 January 2022, so the

Commissioner does not require it to take any further action in relation to the Applicant's application.

## **Decision**

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The Commissioner finds that Lothian Health Board (NHS Lothian) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the requirement for review made by the Applicant. In particular, NHS Lothian failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require NHS Lothian to take any action in respect of this failure in response to the Applicant's application, given that a response was issued on 12 January 2022.

## **Appeal**

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Should either the Applicant or NHS Lothian 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.

**Lorraine Currie  
Deputy Head of Enforcement**

**19 May 2022**

**Scottish Information Commissioner**

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