



Scottish Information  
Commissioner

**Decision 085/2005 Mr Angus Macdonald and NHS Ayrshire and Arran**

**Applicant: Mr Angus Macdonald  
Authority: NHS Ayrshire and Arran  
Case No: 200503195  
Decision Date: 20 December 2005**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
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Fife  
KY16 9DS



## **Decision 085/2005 Mr Angus Macdonald and NHS Ayrshire and Arran**

**Failure to issue a notice that information not held under section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA) – failure to advise the applicant of the right to review, and to apply to the Scottish Information Commissioner as required by section 19 of FOISA – failure to conduct a review as required by section 21 of FOISA**

### **Facts**

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1. Mr Macdonald wrote to a surgeon employed by NHS Ayrshire and Arran (“the surgeon”) on 15 March 2005 seeking access to audit data relating to Ross Hall hospital. These data are held by NHS Greater Glasgow, and therefore, are not held by NHS Ayrshire and Arran for the purposes of FOISA.
2. Mr Macdonald’s letter also requested a copy of an independent review of the 2002 data set carried out by Ross Hall Hospital, which he understood was held by the surgeon in his capacity as the chair of the West of Scotland Managed Clinical Network for colorectal cancer (the MCN).
3. The surgeon held the role of Chair of the MCN in his capacity as an employee of NHS Ayrshire and Arran. Therefore, any recorded information that he held in this capacity can be considered to be held by NHS Ayrshire and Arran for the purposes of FOISA.
4. The surgeon responded to Mr Macdonald initially in a letter of 25 March 2005. This indicated that he did not have access to the audit data and suggested that requests for such data should be directed towards the holder.
5. Mr Macdonald wrote again to the surgeon in a letter dated 3 April, which accepted that the surgeon did not have access to most of the data requested. However, this letter reiterated the request for the report summarising the internal review of the Ross Hall hospital 2002 data set.
6. The surgeon responded to this second letter in an email of 13 April, which quoted at length from a letter from Ross Hall hospital, which summarised an internal review of the 2002 data set.
7. Mr Macdonald then responded to this in an email of 18 April, stating that he had requested a copy of the report. In the absence of any indication of the right of review under FOISA in the surgeon’s letter of 13 April, this communication can be construed as requesting such a review, by questioning the response provided.



8. Following a further exchange on 18 April a copy of the full letter from Ross Hall hospital was faxed to Mr Macdonald.

## Investigation

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9. Mr Macdonald applied for a decision by me in a letter dated 15 September 2005 (which was received on 19 September 2005). His application in relation to NHS Ayrshire and Arran (which was made alongside an application concerning NHS Greater Glasgow's responses to the related request for audit data) was based on his dissatisfaction with the following:
  - a) The surgeon's initial denial of having a copy of the internal review carried out by Ross Hall hospital.
  - b) The surgeon initially provided a summary rather than a copy of the original document.
  - c) The supply of the full letter was outwith the timescale for response under FOISA.
10. This case was validated by establishing that Mr Macdonald had made a valid request for information to a Scottish Public Authority (NHS Ayrshire and Arran, through its representative, the surgeon), and that he had sought a review of the initial response before appealing to me.
11. An information notice was issued to NHS Ayrshire and Arran on 1 December 2005, advising it that an appeal had been received and that an investigation into the matter had begun. This notice invited NHS Ayrshire and Arran to comment on the case in terms of section 49(3) of FOISA.
12. NHS Ayrshire and Arran provided comments upon the case in its response to this notice. In particular, it pointed out that the surgeon (and so NHS Ayrshire and Arran), did not actually hold a report on the review of the 2002 Ross Hall hospital data set. The information held was a letter from the Ross Hall hospital that summarised the review, but did not provide the report of this review itself. NHS Ayrshire and Arran noted that the extracts of the letter provided to Mr Macdonald in the email of 13 April were those which summarised the review and its findings, while the parts not provided until 18 April were not relevant to his request.
13. NHS Ayrshire and Arran did acknowledge, however, that the responses provided by the surgeon had failed to comply with certain technical requirements of FOISA.



## Decision

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14. In this case, NHS Ayrshire and Arran did not hold the audit data sought by Mr Macdonald. It also did not hold a report of the review into the 2002 data set. While a letter was held that summarised this review and its findings, it was not itself a report of that review.
15. Where a public authority does not hold information that has been requested from it, section 17 of FOISA requires that the requestor should be given notice in writing that the information is not held.
16. Under section 19 of FOISA, a notice under section 17 should inform the requestor of the authority's procedure for dealing with complaints about the handling of requests for information. The notice should also inform the requestor of their right under section 20 of FOISA to request an internal review of the decision, and the right of appeal to the Scottish Information Commissioner under section 47(1).
17. I find that NHS Ayrshire and Arran failed to comply with the requirements of sections 17 and 19 of FOISA in the responses issued to Mr Macdonald on 25 March and 13 April 2005.
18. Mr Macdonald's letter of 18 April can be construed as a request for a review, in terms of section 20 of FOISA, of the response to his request of 13 April. In response, Mr Macdonald was provided with a full copy of the letter from Ross Hall hospital. However, NHS Ayrshire and Arran has confirmed that no proper review of the handling of Mr Macdonald's request was conducted.
19. I therefore find that NHS Ayrshire and Arran failed to comply with the requirements of section 21(1) of FOISA by failing to conduct a review of Mr Macdonald's request.
20. I do not find that there has been a breach of the timescales set out in FOISA in NHS Ayrshire and Arran's responses to Mr Macdonald's request.
21. In this case, I am satisfied that Mr Macdonald has been provided with the information held by NHS Ayrshire and Arran that is relevant to his request. I do not require further steps to be taken in response to this decision.



## Appeal

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22. Should either Mr Macdonald or NHS Ayrshire and Arran wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice

**Kevin Dunion**  
**Scottish Information Commissioner**  
**20 December 2005**