

Decision Notice



Decision 204/2012 Mr Sergio Sabato and Highland Health Board

Failure to respond to request and requirement for review

Reference No: 201202241

Decision Date: 12 December 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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Summary

This decision considers whether Highland Health Board (NHS Highland) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Sabato.

Background

1. On 18 August 2012, Mr Sabato wrote to NHS Highland requesting certain specified information.
2. Mr Sabato received no response to his request for information.
3. On 1 October 2012, Mr Sabato wrote to NHS Highland again, requesting a review in respect of its failure to respond.
4. Mr Sabato did not receive a response to his requirement for review and, on 2 November 2012, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Sabato had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 21 November 2012, NHS Highland was notified in writing that an application had been received from Mr Sabato and was invited to comment on the application.
7. NHS Highland responded on 6 December 2012 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. NHS Highland acknowledged that Mr Sabato's request, which it commented had been part of ongoing correspondence between it and Mr Sabato, had not been dealt with. NHS Highland apologised for this and indicated that a review would be conducted and a response issued to Mr Sabato as soon as possible.
9. NHS Highland confirmed that the email address to which Mr Sabato had submitted his requirement of review was an email address of the authority. It explained why it believed the email had not been actioned on receipt.
10. NHS Highland also indicated that it would undertake some further awareness raising of the freedom of information principles and what to do locally within the authority on receipt of an information request or a requirement for review.
11. 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, subject to certain exceptions which are not relevant in this case.
12. Since NHS Highland did not provide a response to Mr Sabato's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. 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, subject to certain exceptions which are not relevant in this case.
14. Since NHS Highland did not provide a response to Mr Sabato's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. 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 NHS Highland failed to discharge these requirements: she now requires a review to be carried out in accordance with them.



DECISION

The Commissioner finds that Highland Health Board (NHS Highland) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Sabato, in particular by failing to respond to Mr Sabato's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires NHS Highland to provide Mr Sabato with a response to his requirement for review, meeting the requirements of section 21 of FOISA, by 29 January 2013.

Appeal

Should either Mr Sabato or Highland Health Board 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 after the date of intimation of this decision notice.

Euan McCulloch
Deputy Head of Enforcement
12 December 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;

- (b) substitute for any such decision a different decision; or

- (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

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