

Decision Notice 204/2021

Covid-19 vaccinations – failure to respond

Applicant: The Applicant

Public authority: Scottish Ministers

Case Ref: 202101304



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Ministers (the Ministers) for the following information relating to a letter dated 31 December 2020, from the Medical and Healthcare Products Regulatory Agency (MHRA), to various UK healthcare entities:

- The information supporting the statement that, in most cases, people who had not received at least one dose of vaccination would be 0% protected against COVID-19
- The information supporting the statement that approximately 30 million UK patients and health and social care workers were totally unprotected against COVID-19 at the time of publication
- Any information evidencing that people who had recovered from COVID-19 were considered to have 0% protection against COVID-19.

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

Background

1. The Applicant made an information request to the Ministers on 19 July 2021.
2. The Ministers responded to the information request on 27 July 2021.
3. On 14 September 2021, the Applicant wrote to the Ministers requiring a review of their decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 17 October 2021, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 10 November 2021, 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

8. The Ministers confirmed the requirement for review had been received and acknowledged their failure to respond. The Ministers also apologise for this failure.
9. They explained that, due to an administrative error, this request had been overlooked and not logged on the appropriate system. Following notification from the Commissioner's office, a review outcome was issued.
10. 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.

11. 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.
12. The Ministers responded to the Applicant's requirement for review on 23 November 2021, apologising for the failure to respond, so the Commissioner does not require them to take any further action in relation to the Applicant's application.

Decision

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 requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of this failure in response to the Applicant's application, given that a review outcome was issued on 23 November 2021.

Appeal

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.

**Euan McCulloch
Deputy Head of Enforcement**

16 December 2021

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