

Decision Notice

Decision 123/2019: Mr Colin Kerr and Dumfries and Galloway Health Board

Letters containing threatening language

Reference No: 201900470

Decision Date: 19 August 2019



Scottish Information
Commissioner

Summary

NHS Dumfries and Galloway was asked whether it held letters containing “threatening language” from a named individual. NHS Dumfries and Galloway confirmed that correspondence was held.

During the investigation, NHS Dumfries and Galloway issued a further response.

The Commissioner investigated and found that NHS Dumfries and Galloway had failed to comply with FOISA in responding to the request. This was because the initial response did not confirm whether the correspondence was from the named individual. As a further response was issued during the investigation, the Commissioner did not require any further action to be taken.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections (1) and (4) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 16 October 2018, Mr Kerr made a request for information to Dumfries and Galloway Health Board (NHS Dumfries and Galloway). He asked for confirmation that correspondence containing threatening language from a named individual was held.
2. NHS Dumfries and Galloway responded on 9 November 2018. It confirmed that there was correspondence logged that may contain threatening language.
3. On 10 November 2018, Mr Kerr emailed NHS Dumfries and Galloway requesting a review of its decision on the basis that he did not consider that his specific request had been answered.
4. Following issue of *Decision 015/2019: Mr Colin Kerr and Dumfries and Galloway Health Board*¹, NHS Dumfries and Galloway notified Mr Kerr of the outcome of its review on 19 February 2019. It upheld its previous response, and confirmed that letters containing threatening language had been recorded.
5. On 9 March 2019, Mr Kerr applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Kerr stated he was dissatisfied with the outcome of NHS Dumfries and Galloway’s review because it had not confirmed whether correspondence was from a named individual.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Kerr made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2019/201900046.aspx>

7. On 13 May 2019, NHS Dumfries and Galloway was notified in writing that Mr Kerr had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Dumfries and Galloway was invited to comment on this application and to answer specific questions.
9. NHS Dumfries and Galloway responded on 21 June 2019. It was asked whether a response could be provided to Mr Kerr responding to the specific terms of his request.
10. On 2 August 2019, NHS Dumfries and Galloway issued a further response to Mr Kerr, answering the specific terms of his request.
11. Mr Kerr was asked on 7 August 2019, whether he was content with the response from NHS Dumfries and Galloway, and whether he required a decision to be issued. On 9 August 2019, Mr Kerr responded and confirmed he still required a decision to be issued.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr Kerr and NHS Dumfries and Galloway. He is satisfied that no matter of relevance has been overlooked.

Response issued by NHS Dumfries and Galloway

13. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
14. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority *should* hold, although the applicant's reasons may be relevant to the investigation of what is actually held.
15. NHS Dumfries and Galloway agreed to issue a further review response to Mr Kerr, responding to the specific terms of his request during the investigation. NHS Dumfries and Galloway did so on 2 August 2019.
16. The Commissioner concludes that NHS Dumfries and Galloway did not respond to Mr Kerr's specific request when it responded to his request. Therefore, the Commissioner finds that NHS Dumfries and Galloway failed to respond to the information request in line with section 1(1) of FOISA.
17. As the Commissioner is satisfied that NHS Dumfries and Galloway's response of 2 August 2019 did respond to the specific request raised by Mr Kerr, he does not require NHS Dumfries and Galloway to take any further action in response to the request.

Decision

The Commissioner finds that, by not responding to the specific terms of Mr Kerr's request, Dumfries and Galloway Health Board (NHS Dumfries and Galloway) failed to comply with Part 1 of FOISA (and, in particular, with section 1(1)).

Given that NHS Dumfries and Galloway issued a further specific response to Mr Kerr during the investigation, the Commissioner does not require NHS Dumfries and Galloway to take any action in respect of this failure in response to Mr Kerr's application.

Appeal

Should either Mr Kerr or NHS Dumfries and Galloway 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.

Margaret Keyse
Head of Enforcement

19 August 2019

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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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