

Decision Notice



Decision 032/2013 Ms Wendy Steele and Fife Health Board

Failure to comply with timescales

Reference No: 201202441

Decision Date: 28 February 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

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

Background

1. On 2 August 2012, Ms Steele wrote to NHS Fife requesting certain specified information.
2. NHS Fife responded on 5 October 2012.
3. On 18 October 2012, Ms Steele wrote to NHS Fife requesting a review of its decision.
4. Ms Steele did not receive a response to her requirement for review and, on 19 November 2012, wrote to the Commissioner's Office, stating that she 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 Ms Steele made a request for information to a Scottish public authority and 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 11 December 2012, NHS Fife was notified in writing than an application had been received from Ms Steele and was invited to comment on the application.
7. NHS Fife responded on 7 January 2013 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. 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.
9. Since NHS Fife did not provide a response to Ms Steele's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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, subject to certain exceptions which are not relevant in this case.
11. Since NHS Fife did not provide a response to Ms Steele's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. NHS Fife acknowledged that it failed to respond to Ms Steele's requirement for review and apologised for this. NHS Fife explained that there had been continuing correspondence between its Patient Relations Manager and Ms Steele in relation to specific complaints. NHS Fife explained that Ms Steele's requirement for review was emailed directly to its Patient Relations Manager, who did not realise its significance under FOISA and failed to pass on the letter to the Executive Lead for FOI. As a consequence the opportunity to conduct a review in a timely manner was missed.
13. NHS Fife stated that it had taken steps to remedy these procedural issues by modifying the database used to record such information.
14. Given that NHS Fife has since responded to Ms Steele's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Ms Steele's application.

DECISION

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

Given that NHS Fife has now provided Ms Steele with a response to her requirement for review, the Commissioner does not require NHS Fife to take any action in respect of these failures, in response to Ms Steele's application.

Decision 032/2013
Ms Wendy Steele
and Fife Health Board



Appeal

Should either Ms Steele or Fife 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
28 February 2013



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.

...