

Decision Notice



Decision 196/2013 Sergio Sabato and Highland NHS Board

Failure to respond to request and requirement for review

Reference No: 201301911

Decision Date: 5 September 2013

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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 NHS Board (the Board) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr Sergio Sabato.

Background

1. On 11 June 2013, Mr Sabato wrote to the Board requesting certain specified information.
2. Mr Sabato received no response to his request for information.
3. On 13 July 2013, Mr Sabato wrote to the Board requesting a review of its failure to respond.
4. Mr Sabato did not receive a response to his requirement for review and, on 19 August 2013, 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 22 August 2013, the Board was notified in writing that an application had been received from Mr Sabato and invited to comment on the application.
7. The Board responded on 3 September 2013, confirming that it had responded to Mr Sabato. It provided a copy of this response, which Mr Sabato confirmed he had received.

Commissioner's analysis and findings

8. The Board acknowledged that it had not complied with the relevant timescales in FOISA, and confirmed measures will be put in place to tighten up the procedures for handling information requests.



9. The Board explained the reason Mr Sabato had not received a response was because the request was sent directly to a staff member, who was on holiday at the time. As a result, Mr Sabato has been advised to use the Board's freedom of information email address to submit his requests in future. This will help ensure that requests are dealt with appropriately, and within the prescribed timescales.
10. 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.
11. Since the Board 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.
12. 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.
13. Since the Board 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.
14. Given that the Board has now responded to Mr Sabato's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Sabato's application.

DECISION

The Commissioner finds that Highland NHS Board (the Board) 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, 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.

Given that the Board has now responded to Mr Sabato's request, the Commissioner does not require it to take any further action.



Appeal

Should either Mr Sabato or Highland NHS Board 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.

Alison Davies
Deputy Head of Enforcement
5 September 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.

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