

# Decision Notice



Decision 265/2013 Sergio Sabato and Highland Health Board

Failure to respond to request and requirement for review

Reference No: 201302608

Decision Date: 21 November 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 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 Sergio Sabato (Mr Sabato).

## Background

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1. On 31 August 2013 and 2 September 2013, Mr Sabato wrote to NHS Highland requesting certain specified information.
2. Although NHS Highland acknowledged both requests on 2 September 2013, Mr Sabato received no response to his requests for information.
3. On 5 October 2013, Mr Sabato wrote to NHS Highland requesting a review of its failure to respond.
4. Mr Sabato did not receive a response to his requirement for review and on 5 November 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, in each case, 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

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6. On 7 November 2013, 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 21 November 2013, and its submissions are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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8. NHS Highland acknowledged that it had not complied with the relevant timescales in FOISA, and confirmed measures would be taken to ensure the process is tightened up for handling information requests. NHS Highland confirmed that a review response would be sent to Mr Sabato.
9. 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.
10. Since NHS Highland did not provide a response to Mr Sabato's requests for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
11. 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.
12. Since NHS Highland did not provide a response to Mr Sabato's requirements for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. 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 either of these cases, 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 requests made by Mr Sabato, in particular by failing to respond to Mr Sabato's requests for information and requirements 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 requirements for review, in accordance with the requirements of section 21 of FOISA, by **6 January 2014**.



## **Appeal**

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Should either Mr Sabato or NHS Highland 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**  
**21 November 2014**



## Appendix

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### 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.

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##### 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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