

Decision Notice

Decision 251/2014: Mr James King and Highland Health Board

Audit trail of a complaint: failure to respond within statutory timescales

Reference No: 201402428

Decision Date: 3 December 2014



Scottish Information
Commissioner

Summary

On 10 March 2014, Mr King asked Highland Health Board (NHS Highland) for information about the audit trail of a complaint regarding the care and treatment of a specified person. This decision finds that NHS Highland failed to respond to Mr King's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered NHS Highland to comply with the requirement for review.

Background

Date	Action
10 March 2014	Mr King made an information request to NHS Highland.
25 March 2014	NHS Highland responded to the information request.
9 May 2014	Mr King wrote to NHS Highland requiring a review of its decision.
	Mr King did not receive a response to his requirement for review.
14 October 2014	Mr King wrote to the Commissioner's Office, stating that he was dissatisfied with NHS Highland's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
27 October 2014	NHS Highland was notified in writing that an application had been received from Mr King and was invited to comment on the application.
10 November 2014	The Commissioner received submissions from NHS Highland. These submissions are considered below.

Commissioner's analysis and findings

1. Mr King applied to the Commissioner on the basis that he had not received a response to his request. During the investigation NHS Highland informed the Commissioner that Mr King was sent a response on 25 March 2014. Mr King has since confirmed he did receive this response.
2. Mr King explained that although he had received a response from NHS Highland, he was not provided with the information he asked for. He requested a review on 9 May 2014. This makes no reference to Mr King having received a response to his request and cannot be interpreted as seeking a review in relation to that response: it asks for a response from NHS Highland, on the basis that none has been received.
3. Nonetheless, NHS Highland should have responded to this requirement for review, in compliance with section 21 of FOISA. It acknowledged that it had failed to do so.
4. 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.

5. It is a matter of fact that NHS Highland did not provide a response to Mr King's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. 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 this case, the Commissioner finds that NHS Highland failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
7. The Commissioner also notes that Mr King submitted a further requirement for review, stating why he was unhappy with NHS Highland's letter of 25 March 2014, on 26 November 2014. This is a valid requirement for review in relation to that response, albeit one made outwith the timescales specified in section 20(5) of FOISA: in terms of section 20(6), NHS Highland may respond to it. The Commissioner would urge NHS Highland to respond to the requirement of 26 November 2014 (as she understands the authority to intend to do) and that of 9 May 2014 together, to avoid any further confusion.

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 responding to the information request made by Mr King. In particular, NHS Highland failed to respond to Mr King's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires NHS Highland to provide a Mr King with a response to his requirement for review, by **Monday 19 January 2014**.

Appeal

Should either Mr King or Highland Health 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.

Enforcement

If Highland Health Board (NHS Highland) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that NHS Highland has failed to comply. The Court has the right to inquire into the matter and may deal with NHS Highland as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

3 December 2014

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