

# Decision Notice

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**Decision 014/2016: Mr Patrick Kelly and Tayside NHS Health Board**

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**Investigation reports relating to a named person: failure to respond within statutory timescales**

Reference No: 201502282

Decision Date: 26 January 2016



Scottish Information  
Commissioner

## Summary

On 16 September 2015, Mr Kelly asked Tayside NHS Health Board (NHS Tayside) for investigation reports and governance arrangements relating to a named person. This decision finds that NHS Tayside failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that NHS Tayside failed to comply with Mr Kelly's requirement for review within the timescale set down by FOISA.

## Background

Date	Action
16 September 2015	Mr Kelly made an information request to NHS Tayside.
	NHS Tayside did not respond to the information request.
30 October 2015	Mr Kelly wrote to NHS Tayside requiring a review of its failure to respond.
	Mr Kelly did not receive a response to his requirement for review.
3 December 2015	Mr Kelly wrote to the Commissioner's Office, stating that he was dissatisfied with NHS Tayside's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5 January 2016	NHS Tayside was notified in writing that an application had been received from Mr Kelly and was invited to comment on the application.
19 January 2016	The Commissioner received submissions from NHS Tayside. These submissions are considered below.

## Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that NHS Tayside did not provide a response to Mr Kelly's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that NHS Tayside did not provide a response to Mr Kelly's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. NHS Tayside acknowledged that it had not responded to Mr Kelly's request and request for review in time. It explained the delay was due to workload and competing priorities.

6. NHS Tayside responded to Mr Kelly's requirement for review on 20 January 2016, so the Commissioner does not require it to take any further action in relation to Mr Kelly's application. The Commissioner was provided with a copy of the response.
7. The Commissioner notes that NHS Tayside has apologised to Mr Kelly for its failure to meet the statutory timescales for responding to his request and request for review.

## Decision

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The Commissioner finds that Tayside NHS Board (NHS Tayside) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Kelly. In particular, NHS Tayside failed to respond to Mr Kelly's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require NHS Tayside to take any action in respect of these failures, in response to Mr Kelly's application, given that a response has now been provided.

## Appeal

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Should either Mr Kelly or Tayside 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**

**26 January 2016**

**Scottish Information Commissioner**

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