

Decision Notice

Decision 074/2019: Mrs M and Greater Glasgow and Clyde Health Board

Medical practice dispute: failure to respond within statutory timescales

Reference No: 201900517 / 201900527 / 201900529 / 201900451

Decision Date: 13 May 2019



Scottish Information
Commissioner

Summary

Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) received four separate information requests concerning a former medical practice, relating to:

- Written summary of concerns and conclusions referred to in specified correspondence
- Details of decision taken to prevent the provision of locum cover
- The Board's decision regarding the future of the practice
- Details on provision of primary medical services to patients of the former practice

This decision finds that NHS Greater Glasgow and Clyde failed to respond to one of the requests within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that NHS Greater Glasgow and Clyde failed to comply with any of the applicant's requirements for review within the timescale set down by FOISA.

The Commissioner has ordered NHS Greater Glasgow and Clyde to comply with the requirements for review.

Background

Date	Action
11 June 2018 (x 2) 10 August 2018 10 September 2018	Mrs M made four separate information requests to NHS Greater Glasgow and Clyde. In some cases, these were followed by requests for, and the provision of, clarification.
5 September 2018 (x 2) 6 December 2018	NHS Greater Glasgow and Clyde responded to three of the information requests. Mrs M did not receive a response to request of 10 September 2018 (which had been clarified on 12 September 2019).
25 September 2018 2 October 2018 31 December 2018	Mrs M wrote to NHS Greater Glasgow and Clyde, requiring a review of its decisions in relation to the requests of 11 June 2018 (x 2) and 10 August 2018. Mrs M wrote on 20 November 2018, seeking a review in respect of NHS Greater Glasgow and Clyde's failure to respond to the request of 10 September 2018.
28 September 2018 3 October 2018 24 January 2019	Although Mrs M received acknowledgements for the first three requests, she did not receive a response to any of her requirements for review. Mrs M did not receive an acknowledgement to the requirement for review of 20 November 2018.

7 March 2019 14 March 2019 17 March 2019 18 March 2019	Mrs M wrote to the Commissioner's Office, stating that she was dissatisfied with NHS Greater Glasgow and Clyde's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
27 March 2019 29 March 2019 (x 2) 28 March 2019	NHS Greater Glasgow and Clyde was notified in writing that the four applications had been received from Mrs M and was invited to comment on these.
10 April 2019	The Commissioner received submissions from NHS Greater Glasgow and Clyde, relating to all four applications. These submissions are considered below.

Commissioner's analysis and findings

1. NHS Greater Glasgow and Clyde accepted that it had not responded to Mrs M's requirements for review and had thus failed to comply with FOISA. It referred to the number of information requests and requirements for review it had received from Mrs M over recent months, noting that alternative strategies for addressing Mrs M's concerns had not been successful.
2. NHS Greater Glasgow and Clyde also referred to the staffing issues it had experienced over recent months and stated that it was in the process of addressing these. It confirmed it would now carry out a review for the four current cases. This has not yet been done at the time of this decision.
3. 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.
4. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to one of Mrs M's requests for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA in this respect.
5. 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.
6. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to Mrs M's requirements for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no reviews have been carried out in these four cases, the Commissioner finds that NHS Greater Glasgow and Clyde failed to discharge these requirements: he now requires a review (or reviews as appropriate) to be carried out in accordance with section 21.
8. The Commissioner notes that NHS Greater Glasgow and Clyde intends to issue Mrs M with an apology for these failures.

Decision

The Commissioner finds that Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mrs M. In particular, NHS Greater Glasgow and Clyde failed to respond to one of Mrs M's requests, or to any of her requirements for review, within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires NHS Greater Glasgow and Clyde to respond to Mrs M's requirements for review, by **Thursday 27 June 2019**.

Appeal

Should either Mrs M or NHS Greater Glasgow and Clyde 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 NHS Greater Glasgow and Clyde fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that NHS Greater Glasgow and Clyde has failed to comply. The Court has the right to inquire into the matter and may deal with NHS Greater Glasgow and Clyde as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

13 May 2019

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