

# Decision Notice 159/2020

---

## **Serious Adverse Event Reviews: failure to respond**

---

**Applicant: The Applicant**

**Public authority: NHS Greater Glasgow and Clyde (NHSGGC)**

**Case Ref: 202000452**



## Summary

---

NHSGGC was asked for copies of Serious Adverse Event Reviews. This decision finds that NHSGGC failed to respond to the requirement for review within the timescale set down by FOISA.

## Background

---

Date	Action
15 January 2020	The Applicant made an information request to NHSGGC under section 1(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).
7 February 2020	NHSGGC responded to the information request, withholding the requested information as it considered complying with the request would incur excessive costs.
11 February 2020	The Applicant emailed the Scottish Ministers, and copied NHSGGC. The email was addressed to the Cabinet Secretary for Health & Social Care and stated that the Applicant was dissatisfied with the response issued by NHSGGC.
14 February 2020	NHSGGC stated that its initial response was correct, but advised the Applicant that it would redact the documents and provide the information within a week.
21 and 28 February 2020	NHSGGC apologised for delay and indicated that the information would be provided imminently.
23 March 2020	The Applicant emailed NHSGGC requiring a review of its decision under section 20(3) of FOISA.
	The Applicant did not receive a response to its requirement for review.
22 June 2020	The Applicant emailed the Commissioner, stating that it was dissatisfied with NHSGGC's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
23 June 2020	NHSGGC was notified in writing that an application had been received and was invited to comment on the application.
9 July 2020 and 8 September 2020	The Commissioner received submissions from NHSGGC. These submissions are considered below.

## Commissioner's analysis and findings

---

1. 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.

2. The Coronavirus (Scotland) Act 2020 (the Coronavirus Act), which came into force on 7 April 2020, temporarily extended the maximum timescales for responding to requests and requests for review under FOISA from 20 to 60 working days. The Coronavirus Act was amended by the Coronavirus (Scotland) (No.2) Act 2020 (Coronavirus No.2 Act), which came into force on 27 May 2020, and which, among other things, removed those extended timescales.
3. In its submissions, NHSGGC stated that it could have considered the email from the Applicant of 11 February 2020 to be a requirement for review, and while a formal review process was not commenced, a decision was taken to provide the Applicant with the requested information.
4. NHSGGC went on to comment that the subsequent correspondence with the Applicant, was considered to be ongoing correspondence regarding the action to deal with the information request, and was considered in this light.
5. The Commissioner finds that the email from the Applicant to the Scottish Ministers, and copied to NHSGGC on 11 February 2020, was not a valid requirement for review, as this email was not sent directly or addressed to NHSGGC. Consequently, NHSGGC's response on 14 February 2020 could not be considered as a review response.
6. In addition, the Commissioner notes that the email from NHSGGC issued on 14 February 2020, did not contain any appeal rights as required by section 19(b)(Content of certain notices) of FOISA. This further satisfies the Commissioner, that the response issued by NHSGGC on 14 February 2020 was not a review response.
7. Having considered the papers before him, the Commissioner finds that the actual requirement for review was contained in an email dated 23 March 2020 from the Applicant to the Public Authority. No response was made to that requirement for review prior to the application being made to the Commissioner.
8. Therefore, it is a matter of fact that NHSGCC failed to respond to this requirement for review within 20 working days.
9. However, the Coronavirus No.2 Act also provides that the Commissioner may find that a late response was not a breach of FOISA if:
  - (i) if it was late because of the effects of the coronavirus or because the authority was working to the extended timescales set when the Coronavirus Act first came into force, and
  - (ii) the delay was reasonable in the circumstances. In deciding what was reasonable, the primary consideration for the Commissioner must be the public interest in complying with the request promptly.
10. On 14, 21 and 28 February 2020, NHSGGC advised the Applicant that they would be provided with a copy of the information requested imminently. No further updates were provided to the Applicant.
11. NHSGGC apologised for its failure to respond within the relevant timescales. It explained that the process of marking up and then redacting the reports in batches was a lengthy process and difficulties were encountered in receiving feedback from relevant staff. NHSGGC explained that staff also encountered technical problems redacting the reports due to working remotely, as a result of the coronavirus pandemic.

12. NHSGGC submitted that three staff within its FOI team had been working from home since 23 March 2020. However, two members of the FOI team were not able to gain full remote access to the systems until 4 April 2020.
13. On 18 May 2020, NHSGGC explained that one member of the FOI Team was temporarily reassigned to the contact tracing team, to assist with urgent administrative tasks required to set up this important programme of work. At the time the member of staff was reassigned, the extended timescales for responding to request were in force.
14. NHSGGC submitted that, due to the importance of the contact tracing work, it was felt that, having committed the staff member to the contract tracing programme for a period of six weeks, it was not appropriate to immediately bring them back to their FOI duties. This unfortunately had a detrimental impact on the workload of the two remaining members of the FOI team and the resources available to deal with the requests and reviews.
15. The Commissioner has considered whether the review response was late due to the effects of the coronavirus. The Commissioner has some sympathy for the issues faced by NHSGGC during this pandemic, but taking account of the timing of this request, the expectations provided to the Applicant by NHSGGC and all submissions, the Commissioner does not accept that NHSGGC's ability to respond to this requirement for review within the timescales was impacted by the effects of the coronavirus.
16. Having reviewed the submissions in detail, the Commissioner considers that while the issues raised no doubt contributed to the delay in providing redacted copies of the documents, they were not directly relevant to the delay in responding to the requirement for review. The Commissioner is satisfied that the delays in responding to the requirement for review were largely due to the incorrect identification of the correspondence of 11 February 2020 as a possible requirement for review. The Commissioner finds that it was the subsequent failure to correctly identify the correspondence of 23 March 2020 as the valid requirement for review (i.e. meeting the requirements of section 20(3) of FOISA), as opposed to the impact of the effects of the coronavirus, which led directly to NHSGGC's failure to conduct a review in the required timescales. Therefore, the Commissioner finds that NHSGGC failed to comply with section 21(1) of FOISA.
17. As NHSGGC responded to the Applicant's requirement for review on 8 July 2020, the Commissioner does not require it to take any further action in relation to the Applicant's application.

## Decision

---

The Commissioner finds that NHS Greater Glasgow and Clyde (NHSGGC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. In particular, NHSGGC failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA.

The Commissioner does not require NHSGGC to take any action in respect of this failure, in response to the Applicant's application, given that a review response has been issued.

## **Appeal**

---

Should either the Applicant or NHSGGC 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.

**Daren Fitzhenry**  
**Scottish Information Commissioner**

**8 December 2020**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**