

Decision Notice

Decision 070/2015: Dr Jonathan Chappell and Borders Health Board

Policies and procedures: failure to respond within statutory timescales

Reference No: 201500762

Decision Date: 12 June 2015



Scottish Information
Commissioner

Summary

On 30 December 2014, Dr Chappell asked Borders Health Board (NHS Borders) for information about policies and procedures to deal with the protection of staff and patients if staff are diagnosed as suffering from an infection. This decision finds that NHS Borders 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 Borders failed to comply with Dr Chappell's requirement for review within the timescale set down by FOISA.

Background

Date	Action
30 December 2014	Dr Chappell made an information request to NHS Borders.
14 January 2015	Although NHS Borders sent an acknowledgement, it did not respond to the information request.
16 March 2015	Dr Chappell wrote to NHS Borders, requiring a review in respect of its failure to respond.
	Dr Chappell did not receive a response to his requirement for review.
21 April 2015	Dr Chappell wrote to the Commissioner, stating that he was dissatisfied with NHS Borders' failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13 May 2015	NHS Borders was notified in writing that an application had been received from Dr Chappell and was invited to comment on the application.
27 May 2015	The Commissioner received submissions from NHS Borders. 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 Borders did not provide a response to Dr Chappell'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. NHS Borders explained to the Commissioner that it wrote to Dr Chappell on 25 May 2015. It explained that a response had been prepared on 31 March 2015 and it was assumed to have

been lost in transit. It provided a copy of that response to Dr Chappell, with information in response to his request.

5. In its submissions to the Commissioner, NHS Borders explained that (during the investigation) it had recovered the retained file copy of the letter to Dr Chappell dated 31 March 2015. It assumed the letter had been posted at that time, but was unable to evidence this for the Commissioner. The Commissioner can only conclude that NHS Borders did not provide a response to Dr Chappell's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. As a response has now been provided to Dr Chappell, the Commissioner does not require NHS Borders to take any further action in relation to Dr Chappell's application.

Decision

The Commissioner finds that Borders Health Board (NHS Borders) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Chappell. In particular, it failed to respond to Dr Chappell'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 Borders to take any action in respect of these failures, in response to Dr Chappell's application, given that a response has now been issued.

Appeal

Should either Dr Chappell or NHS Borders 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.

Euan McCulloch
Deputy Head of Enforcement

12 June 2015

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info