



Scottish Information  
Commissioner

**Decision 173/2006 – Mr Donald McNeill and the  
Western Isles NHS Board**

*Failure of the Western Isles NHS Board to respond to a request for  
employment details of managers, staff and consultants which it  
employed*

**Applicant: Donald McNeill  
Authority: The Western Isles NHS Board  
Case No: 200600894  
Decision Date: 25 September 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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KY16 9DS



## Decision 173/2006 – Mr Donald McNeill and the Western Isles NHS Board

### *Failure of the Western Isles NHS Board to respond to a request for employment details of managers, staff and consultants which it employed*

#### Facts

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1. On 12 February 2006 Mr Donald McNeill contacted the Board to request the following:
  - The name and designation of managers appointed by the Board since April 2003 and whether these were replacement or additional posts
  - Confirmation by the Audit/Human Resources section of the Board that their appointment was in accordance with its procedures and that their qualifications had been verified
  - The names of senior officers to whom the Board's policy on relocation and expenses (with personal tax liabilities being met by the Board) was being applied and operative date
  - The amount of travel, subsistence, removal expenses and personal tax liabilities paid to these individual senior officers in 2003/2004, 2004/2005 and to date in 2005/2006
  - The names of external consultants providing finance, legal, management, IT and human resource engaged by the Board in 2003/2004, 2004/2005 and to date in 2005/2006
  - The amount of fees and all expenses paid to these consultants in 2003/2004, 2004/2005 and to date in 2005/2006
  - The names of eligible officers who had received Performance Related Pay paid to eligible officers in 2002/2003, 2003/2004 and 2004/2005, the amount paid to those officers, and confirmation that these payments met The Scottish Executive Health Department's requirements and were in accordance with an approved corporate plan and performance management system
  - Dates of remuneration committee meetings held in 2003, 2004 and 2005
2. When no response was received to these requests within 20 working days, Mr McNeill wrote to the Board to request that it review its handling of his information requests on 20 March 2006.



3. When no response was again received in relation to this correspondence, Mr McNeill submitted an application for decision to the Commissioner. This application was received by the Commissioner on 9 May 2006.
4. Mr McNeill's application was validated by establishing he had made a request for information to a Scottish public authority, and had appealed to the Commissioner only after asking the authority to review its original decision.
5. The Board was advised of the application made by Mr McNeill in terms of section 49(3)(a) of FOISA and was given an information notice under section 50 of the Freedom of Information (Scotland) Act 2002 (FOISA) ordering the Board to provide the Commissioner with comments with regard to its handling of Mr McNeill's request on 30 June 2006.
6. Having received no substantive response, the Commissioner contacted the Board again on 20 July 2006, on 24 August 2006 and finally on 5 September 2006. During this period the Board informed the Commissioner that, due to internal personnel issues, its response had been delayed but would be forthcoming.
7. The Board responded in full to the Commissioner on 13 September 2006. It accepted that it had not responded to either Mr McNeill's request or request for review in the manner set out in FOISA, and had therefore failed in its obligations under FOISA.
8. The Board stated that as there had been extensive changes in personnel within the intervening period, it was unable to explain why the request had been overlooked. It assured the Commissioner that the matter was now being dealt with as a priority and that it had taken the opportunity to discuss its handling of the request with the applicant.
9. The Board added that all staff had now been reminded of the need to identify and respond appropriately to requests for information and that training needs of staff relating to FOISA were being identified and addressed as a matter of urgent priority.

## Decision

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The Commissioner finds that the Western Isles NHS Board (the Board) failed to deal with Mr McNeill's request for information in accordance with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA), in that it failed to comply with sections 10(1) and 21(1) of FOISA in its handling of his request.



The Commissioner requires the Board to respond to Mr McNeill's request for information by either disclosing the information he has requested, or by issuing a notice under section 16 (Refusal of request) or section 17 (notice that information is not held).

The Commissioner requires the Board to respond to Mr McNeill within 45 days of receipt of this notice.

The Commissioner accepts that significant changes in personnel within an authority can create failings in the administration of requests for information under FOISA, and in subsequent communications with him. However, authorities should take note that, under section 50 of FOISA, they are obliged to provide the Commissioner with information should he give an information notice requiring them to do so. In this case, the Commissioner would have been well within his rights to report the Board's failure to respond to the information notice to the Court of Session under section 53 of FOISA and, notwithstanding the Board's acceptance of its failures to comply with Part 1 of FOISA and assurances that these are being addressed, must view its failure to respond both to Mr McNeill and to him with concern.

## **Appeal**

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Should either party wish to appeal this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

**Margaret Keyse**  
**Head of Investigations**  
**25 September 2006**