

Decision Notice



Decision 188/2013 Dr Peter Gordon and Western Isles NHS Board

Failure to respond to request and requirement for review

Reference No: 201301754

Decision Date: 22 August 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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Summary

This decision considers whether Western Isles NHS Board (the Board) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Dr Peter Gordon (Dr Gordon).

Background

1. On 8 May 2013, Dr Gordon wrote to the Board requesting certain specified information.
2. Although Dr Gordon received an acknowledgement confirming that the Board had received his request for information, the Board did not respond to his request.
3. On 19 June 2013, Dr Gordon wrote to the Board requesting a review of its failure to respond.
4. Again, although Dr Gordon received an acknowledgement confirming that the Board had received his requirement for review, the Board did not respond to it.
5. Dr Gordon did not receive a response to his requirement for review and on 30 July 2013 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Dr Gordon had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 1 August 2013, the Board was notified in writing that an application had been received from Dr Gordon and was invited to comment on the application.
8. The Board responded on 16 August 2013 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

9. The Board explained that it had not responded to the request or the requirement for review because of an administrative breakdown. The response had been prepared, but had not been forwarded for agreement to the Chief Executive. As a result, the Chief Executive instigated an internal audit review of the system as a whole, from receipt of requests to the review outcome, to resolve such issues in the future. The Commissioner is pleased to note the action that has been taken by the Chief Executive, but has nonetheless had to conclude that the Board failed to comply with the timescales prescribed in FOISA, as set out below.
10. 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, subject to certain exceptions which are not relevant in this case
11. Since the Board did not provide a response to Dr Gordon's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. 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, subject to certain exceptions which are not relevant in this case.
13. Since the Board did not provide a response to Dr Gordon's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. Given that the Board has now responded to Dr Gordon's requirement for review (a notice was sent to Dr Gordon on 15 August 2013), the Commissioner does not require the Board to take any further action in this case, in response to Dr Gordon's application.

DECISION

The Commissioner finds that the Western Isles NHS Board (the Board) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Dr Gordon, in particular by failing to respond to Dr Gordon's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Board has responded to Dr Gordon's requirement for review, the Commissioner does not require the Board to take any action in this case, in response to Dr Gordon's application.



Appeal

Should either Dr Peter Gordon or Western Isles 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.

Margaret Keyse
Head of Enforcement
22 August 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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