

# Decision Notice



Decision 133/2013 Dr Glenn Rainey and Greater Glasgow and Clyde Health Board

Failure to carry out a review

Reference No: 201301167  
Decision Date: 08 July 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether Greater Glasgow and Clyde Health Board (the Board) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Dr Rainey.

## Background

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1. On 5 and 15 February 2013, Dr Rainey made two requests to the Board requesting certain specified information.
2. The Board responded in three emails (dated 4, 6 and 7 March 2013) to Dr Rainey.
3. On 8 March 2013, Dr Rainey wrote to the Board requesting a review of its handling of his request. He repeated his request for a review on 5 April 2013.
4. Dr Rainey did not receive a formal response to his requirement for review and on 16 May 2013 wrote to the Commissioner's Office, stating that he was were dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Dr Rainey 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

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6. On 12 June 2013, the Board was notified in writing that an application had been received from Dr Rainey and was invited to comment on the application.
7. The Board responded on 26 June 2013, and its submissions are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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8. The Board explained to the Commissioner that it dealt with Dr Rainey's request on a "business as usual" basis (rather than under FOISA) because of the subject matter of the request and Dr Rainey's position as an employee. NHS Greater Glasgow recognised that it should have responded under FOISA from the outset and accepted that it had failed to act upon Dr Rainey's requirement for review.
9. The Board has now completed a review and it is understood the decision will be issued to Dr Rainey on 10 July 2013.
10. 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.
11. Since the Board did not provide a response to Dr Rainey's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. Given that the Board has now responded to Dr Rainey's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Dr Rainey's application.

## DECISION

The Commissioner finds that Greater Glasgow and Clyde Health 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 Rainey, by failing to respond to Dr Rainey's requirement for review within the statutory timescale laid down by section 21(1) of FOISA.

Given that a review notice has been issued, the Commissioner does not require Greater Glasgow and Clyde Health Board to take any further action in response to this failure.



## Appeal

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Should either Dr Rainey or the Board wish to appeal against 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 after the date of intimation of this decision.

**Alison Davies**  
**Deputy Head of Enforcement**  
**08 July 2013**



## Appendix

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### 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.

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##### 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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