

Decision Notice

Decision 033/2018: Dr Robert Coull and the Scottish Ambulance Service Board

Legal Opinion on the use of blue lights: failure to respond within statutory timescales

Reference No: 201702268

Decision Date: 08 March 2018



Summary

The Scottish Ambulance Service Board (SASB) was asked for the Central Legal Office opinion on the use of blue lights by BASICS responders (i.e. the British Association for Immediate Care). This decision finds that the SASB failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered SASB to comply with the requirement for review.

Background

Date	Action
10 November 2017	Dr Coull made an information request to the SASB.
16 November 2017	The SASB responded to the information request.
16 November 2017	Dr Coull wrote to the SASB requiring a review of its decision.
	Dr Coull did not receive a response to his requirement for review.
19 December 2017	Dr Coull wrote to the Commissioner's Office, stating that he was dissatisfied with the SASB's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
25 January 2018	The SASB was notified in writing that an application had been received from Dr Coull and was invited to comment on the application.
8 February 2018	The Commissioner received submissions from the SASB. 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 SASB explained that it has not been able to find any trace of Dr Coull's requirement for review after carrying out extensive searches.
3. While the SASB submitted that it has no record of Dr Coull's requirement for review, the "Whatdotheyknow" (WDTK) website indicates that the requirement for review was delivered to the SASB on 16 November 2017.
4. The Commissioner accepts that Dr Coull submitted his requirement for review through the WDTK website on 16 November 2017. Section 74(2)(b) of FOISA states that where a thing (such as a requirement for review) is transmitted by electronic means, it is presumed to be received on the day of transmission. While the SASB have submitted that it has no record of having received the requirement for review, the submissions do not rebut the presumption outlined in section 74(2)(b) of FOISA.

5. On the balance of probabilities, the Commissioner accepts that the requirement for review was received by the SASB on 16 November 2017, even if it was not identified and acted upon. In the circumstances, he must find that the SASB failed to respond to the requirement for review within the timescale required by section 21(1) of FOISA.
6. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the SASB failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.

Decision

The Commissioner finds that the Scottish Ambulance Service Board (SASB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Coull. In particular, the SASB failed to respond to Dr Coull's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the SASB to provide a response to Dr Coull's requirement for review, by **23 April 2018**.

Appeal

Should either Dr Coull or the Scottish Ambulance Service 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.

Enforcement

If the SASB fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SASB has failed to comply. The Court has the right to inquire into the matter and may deal with the SASB as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

08 March 2018

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