

Decision Notice



Decision 006/2013 Mr Sergio Sabato and Highland Health Board

Failure to respond to requests and requirements for review

Reference No: 201202622, 201202624, 201202625, 201202626 and
201202627

Decision Date: 18 January 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

This decision considers whether Highland Health Board (NHS Highland) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information requests made by Mr Sabato.

Background

1. Between 26 September 2012 and 4 October 2012, Mr Sabato emailed NHS Highland on five separate occasions requesting certain specified information (requests sent on 26 September 2012 (two requests), 1 October 2012 (two requests), and 4 October 2012).
2. Mr Sabato received no response to his requests for information.
3. Between 29 October 2012 and 6 November 2012, Mr Sabato emailed NHS Highland on five separate occasions requesting a review of its failure to respond to each of his requests (review requests sent on 29 October 2012 (two review requests), 2 November 2012 (two review requests), and 6 November 2012).
4. Mr Sabato did not receive responses to his requirements for review and, on 10 December 2012, wrote to the Commissioner's Office, stating that he was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The applications were validated by establishing that Mr Sabato had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The cases were then allocated to an investigating officer.
6. Mr Sabato's applications have been conjoined for the purposes of this decision.

Investigation

7. On 19 December 2012, NHS Highland was notified in writing that applications had been received from Mr Sabato and was invited to comment on those applications.



8. NHS Highland responded on 9 January 2013 and its submissions are considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. NHS Highland acknowledged that it had not dealt with Mr Sabato's requests and requirements for review and apologised for these failures. It stated that a response would be issued to Mr Sabato as soon as possible encompassing all five requests.
10. NHS Highland explained that it would take steps to further raise awareness among its staff on FOISA, including what to do when an information request or requirement for review is received.
11. 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.
12. Since NHS Highland did not provide a response to any of Mr Sabato's requests for information within 20 working days, the Commissioner finds that, in each case, it failed to comply with section 10(1) of FOISA.
13. 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.
14. Since NHS Highland did not provide a response to any of Mr Sabato's requirements for review within 20 working days, the Commissioner finds that, in each case, it failed to comply with section 21(1) of FOISA.
15. 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 NHS Highland failed to discharge these requirements: she now requires reviews to be carried out in accordance with them.

DECISION

The Commissioner finds that Highland Health Board (NHS Highland) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Sabato, in particular by failing to respond to Mr Sabato's requests for information and requirements for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

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The Commissioner therefore requires NHS Highland to provide Mr Sabato with a response to his requirements for review, in accordance with the requirements of section 21 of FOISA, by **4 March 2013**.

Appeal

Should either Mr Sabato or Highland Health 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 notice.

Alison Davies
Acting Deputy Head of Enforcement
18 January 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; or

...

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;

- (b) substitute for any such decision a different decision; or

- (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...