

Decision Notice



Decision 286/2013 Mr Peter Hammond and Tayside Health Board

GMC numbers: failure to respond within statutory timescale

Reference No: 201302749

Decision Date: 13 December 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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



Summary

This decision considers whether Tayside Health Board (NHS Tayside) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Hammond on 15 October 2013.

Background

1. On 15 October 2013, Mr Hammond wrote to NHS Tayside requesting certain specified information.
2. NHS Tayside responded on 16 October 2013.
3. On 18 October 2013, Mr Hammond wrote to NHS Tayside requesting a review of its decision.
4. Mr Hammond did not receive a response to his requirement for review and, on 19 November 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.
5. The application was validated by establishing that Mr Hammond made a request for information to a Scottish public authority and 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

6. On 27 November 2013, NHS Tayside was notified in writing that an application had been received from Mr Hammond and invited to comment on the application.
7. NHS Tayside responded on 12 December 2013 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. NHS Tayside acknowledged that it had not responded to Mr Hammond's requirement for review, and accepted that the steps in its procedures had not been followed. NHS Tayside confirmed that a response would be sent to Mr Hammond: this had not been done by the time of this decision.
9. 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 qualifications which are not relevant in this case.
10. Since NHS Tayside did not provide a response to Mr Hammond's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
11. 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 Tayside failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

DECISION

The Commissioner finds that Tayside Health Board (NHS Tayside) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Hammond, in particular by failing to respond to Mr Hammond's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner therefore requires NHS Tayside to provide Mr Hammond with a response to his requirement for review, in accordance with the requirements of section 21 of FOISA, by **27 January 2014**.

Decision 286/2013
Mr Peter Hammond
and Tayside Health Board



Appeal

Should either Mr Hammond or Tayside Health 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.

Euan McCulloch
Deputy Head of Enforcement
13 December 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...