

Decision Notice

Decision 032/2019: Mrs Carolyn Neilson and NHS Greater Glasgow and Clyde

Information relating to former General Practice from 23/03/17 to 30/03/17: failure to respond within statutory timescales

Reference No: 201900168

Decision Date: 06 March 2019



Scottish Information
Commissioner

Summary

On 10 September 2019, Mrs Carolyn Neilson asked NHS Greater Glasgow and Clyde (NHSGGC) for information about a former General Practice. This decision finds that NHSGGC failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision finds that NHSGGC also failed to comply with Mrs Neilson's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
10 September 2018	Mrs Neilson made an information request to NHSGGC.
	NHSGGC did not respond to the information request.
20 November 2018	Mrs Neilson wrote to NHSGGC, requiring a review in respect of its failure to respond.
	Mrs Neilson did not receive a response to her requirement for review.
25 January 2019	Mrs Neilson wrote to the Commissioner's Office, stating that she was dissatisfied with NHSGGC's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
31 January 2019	NHSGGC was notified in writing that an application had been received from Mrs Neilson and was invited to comment on the application.
	The NHSGGC did not provide the Commissioner with any submissions.

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that NHSGGC did not provide a response to Mrs Neilson's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that NHSGGC did not provide a response to Mrs Neilson's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. 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 NHSGGC failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
6. The Commissioner recommends that the NHSGGC considers whether it would be appropriate to apologise to Mrs Neilson for its failure to comply.

Decision

The Commissioner finds that NHSGGC failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Neilson. In particular, NHSGGC failed to respond to Mrs Neilson's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires NHSGGC to provide Mrs Neilson with a review, by **20 April 2019**.

Appeal

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

Euan McCulloch
Deputy Head of Enforcement

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