

Decision Notice

Decision 040/2019: Ms K and Greater Glasgow & Clyde Health Board

Hospice overnight occupancy rates April - June 2018: failure to respond within statutory timescales

Reference No: 201900287

Decision Date: 11 March 2019



Scottish Information
Commissioner

Summary

On 20 September 2018, Ms K asked Greater Glasgow and Clyde Health Board (NHS Greater Glasgow & Clyde) for information about hospice occupancy rates. This decision finds that NHS Greater Glasgow and Clyde failed to comply with Ms K's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered NHS Greater Glasgow and Clyde to comply with the requirement for review.

Background

Date	Action
20 September 2018	Ms K made an information request to NHS Greater Glasgow and Clyde.
17 October 2018	NHS Greater Glasgow and Clyde responded to the information request.
22 November 2018	Ms K wrote to NHS Greater Glasgow and Clyde requiring a review of its failure to respond.
	Ms K did not receive a response to her requirement for review.
15 February 2019	Ms K wrote to the Commissioner's Office, stating that she was dissatisfied with NHS Greater Glasgow and Clyde's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
22 February 2019	NHS Greater Glasgow and Clyde was notified in writing that an application had been received from Ms K and was invited to comment on the application.
11 March 2019	The Commissioner received submissions from NHS Greater Glasgow and Clyde. 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. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to Ms K's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
3. 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 Greater Glasgow and Clyde failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.

4. NHS Greater Glasgow and Clyde has explained to the Commissioner the reasons why it fell behind in responding to information requests, including Ms K's request for review, and what action it has taken to remedy this situation.
5. The Commissioner notes that NHS Greater Glasgow and Clyde intends to provide Ms K with a review and an apology for the delay. As this has not yet been provided, the Commissioner requires NHS Greater Glasgow and Clyde to issue a full response to Ms K's request for review.

Decision

The Commissioner finds that NHS Greater Glasgow and Clyde failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms K. In particular, NHSGGC failed to respond to Ms K's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires NHS Greater Glasgow and Clyde to issue a review, by **25 April 2019**.

Appeal

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

Alison Davies
Deputy Head of Enforcement

11 March 2019

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