



Decision Notice 028/2023

Complaint details – failure to respond

Applicant: The Applicant

Authority: Greater Glasgow and Clyde Health Board

Case Ref: 202300115

Summary

The Applicant asked the Authority for information about an alleged complaint. This decision finds that the Authority failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

Background

1. The Applicant made an information request to the Authority on 2 November 2022.
2. The Authority did not respond to the information request.
3. On 22 December 2023, the Applicant wrote to the Authority, seeking a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 26 January 2023, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 14 February 2023.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority acknowledged that it had not responded to the Applicant's information request and requirement for review on time.
10. It explained that, over the winter period of 2022-23, there was a significant increase in the number of information requests received. It also explained that staff resourcing issues during this period, exacerbated by the 4-week absence of a key staff member, impacted significantly on its ability to respond to requests within statutory timescales.
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. This is subject to qualifications which are not relevant in this case.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that 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. Again, this is subject to qualifications which are not relevant in this case.
14. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that 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.
16. The Authority responded to the Applicant's requirement for review on 31 January 2023, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the Authority has issued an apology to the Applicant for its failure to comply.
18. The Commissioner would remind Scottish public authorities that the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code) expects them to be adequately resourced to support and deliver their FOI duties (paragraph 1.1.4 in Part 2) and, specifically, to have in place robust arrangements to ensure that staff absences (planned or unplanned) do not affect their ability to respond to information requests and requests for review (paragraph 1.4.1 in Part 2).

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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

24 March 2023