

Decision Notice



Decision 227/2013 Sergio Sabato and Highland Health Board

Failure to respond to requirement for review

Reference No: 201302171

Decision Date: 11 October 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle

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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 an information request made by Mr Sabato.

Background

1. On 11 July 2013, Mr Sabato wrote to NHS Highland requesting certain specified information.
2. NHS Highland responded on 8 August 2013.
3. On 9 August 2013, Mr Sabato wrote to NHS Highland requesting a review of its decision.
4. Although Mr Sabato received an acknowledgement to his requirement for review on 12 August 2013, he did not receive a response.
5. On 14 September 2013, Mr Sabato wrote to the Commissioner's office, stating that he was dissatisfied with NHS Highland's failure to respond to his requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Sabato 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

7. On 18 September 2013, NHS Highland was notified in writing that an application had been received from Mr Sabato and invited to comment on the application.
8. NHS Highland responded on 4 October 2013 and again on 10 October 2013. Its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

9. NHS Highland explained that Mr Sabato's requirement for review had been missed, commenting that the likely reason for this was the volume of requests received from Mr Sabato relating to the same subject matter. NHS Highland apologised for this oversight and confirmed that it would now carry out a review.
10. 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.
11. Since NHS Highland did not provide a response to Mr Sabato's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. While the Commissioner notes NHS Highland's stated intention to carry out a review, this has not yet been done. The rest of section 21 provides the statutory framework within which a review is to be carried out. As no review has been carried out in this case, the Commissioner finds that NHS Highland failed to discharge these requirements: she now requires a review 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 request made by Mr Sabato, in particular by failing to respond to Mr Sabato's requirement for review within the timescale laid down by section 21(1) of FOISA and otherwise in accordance with section 21.

The Commissioner therefore requires NHS Highland to undertake a review in respect of Mr Sabato's request for information, in accordance with section 21 of FOISA, within 45 calendar days after the date of intimation of this decision notice, that is by **25 November 2013**.



Appeal

Should either Mr Sabato or Highland 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
11 October 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.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.



- (7) Regulations under subsection (6) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.