

Decision Notice

Decision 115/2014 Mr Sergio Sabato and Highland Health Board

Raigmore Hospital – staff recruitment: failure to respond within statutory timescales

Reference No: 201401014

Decision Date: 28 May 2014



Scottish Information
Commissioner

Summary

On 5 March 2014, Mr Sabato asked Highland Health Board (NHS Highland) for details of advertised posts at Raigmore Hospital in 2013-2014. This decision finds that NHS Highland failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that NHS Highland failed to comply with Mr Sabato's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
5 March 2014	Mr Sabato made an information request to NHS Highland.
	NHS Highland did not respond to the information request.
7 April 2014	Mr Sabato wrote to NHS Highland, requiring a review in respect of its failure to respond.
	Although Mr Sabato received an acknowledgement on 14 April 2014, he did not receive a response to his requirement for review.
12 May 2014	Mr Sabato wrote to the Commissioner's Office, stating that he was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15 May 2014	NHS Highland was notified in writing that an application had been received from Mr Sabato and was invited to comment on the application.
21 May 2014	The Commissioner received submissions from NHS Highland. These submissions are considered below.

Commissioner's analysis and findings

1. NHS Highland acknowledged that it had not complied with the relevant timescales in FOISA, and confirmed that a review response would be sent to Mr Sabato. NHS Highland had not responded to Mr Sabato by the time of this decision.
2. 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.
3. It is a matter of fact that NHS Highland did not provide a response to Mr Sabato's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

4. 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.
5. It is a matter of fact that NHS Highland did not provide a response to Mr Sabato's requirement for review within 20 working days, so the Commissioner finds that it to comply with section 21(1) of FOISA.
6. 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 Highland failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
7. NHS Highland explained that the request had not been received through the normal channels for information requests and was not recognised as a request for information. It acknowledged that it should have been, however, and confirmed that it had reminded staff that information requests and requirements for review should be passed to the FOI team as soon as possible.
8. NHS Highland noted that use of its freedom of information email address should ensure that requests are dealt with appropriately, and within the prescribed timescales. Although not compulsory, the Commissioner would suggest that it may be beneficial for Mr Sabato, and others, to follow this route when making requests.

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 responding to the information request made by Mr Sabato. In particular, NHS Highland failed to respond to Mr Sabato'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 NHS Highland to provide Mr Sabato with a response to his requirement for review, by **Monday 14 July 2014**.

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
28 May 2014

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