

Decision Notice

Decision 038/2019: Mrs D and Greater Glasgow and Clyde Health Board

Medical Practice dispute: failure to respond within statutory timescales

Reference No: 201900262

Decision Date: 11 March 2019



Scottish Information
Commissioner

Summary

Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) was asked for information about a former medical practice, including details of the “differences” between the two partners, evidence of resolving these “differences” and consideration of mediation. This decision finds that NHS Greater Glasgow and Clyde failed to respond to the request and request for review within the timescale allowed 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
28 August 2018	Mrs D made an information request to NHS Greater Glasgow and Clyde.
28 August 2018	Although NHS Greater Glasgow and Clyde acknowledged the information request, it did not respond to it.
20 November 2018	Mrs D wrote to NHS Greater Glasgow and Clyde requiring a review of its failure to respond.
27 November 2018	Again, although Mrs D received an acknowledgement, she did not receive a response to her requirement for review.
12 February 2019	Mrs D wrote to the Commissioner’s Office, stating that she was dissatisfied with NHS Greater Glasgow and Clyde’s failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
21 February 2019	NHS Greater Glasgow and Clyde was notified in writing that an application had been received from Mrs D and was invited to comment on the application.
7 March 2019	The Commissioner received submissions from NHS Greater Glasgow and Clyde. These submissions are considered below.

Commissioner’s analysis and findings

1. NHS Greater Glasgow and Clyde accepted that it had not responded to Mrs D’s request and request for review and that it had failed to comply with FOISA.
2. NHS Greater Glasgow and Clyde explained that it had received 21 information requests and 14 requests for review from Mrs D over recent months. Acknowledging the volume of requests, the Head of Corporate Governance and Administration has written to Mrs D offering to meet her, with a view to exploring different approaches to seeking resolution for her. The Commissioner welcomes this.
3. NHS Greater Glasgow and Clyde explained that some of the information requested by Mrs D had been collated, in preparation for the response to her request, but this work had not been

concluded. It submitted that part of the reason for the failure was due to staffing issues and competing work priorities.

4. The Commissioner notes that NHS Greater Glasgow and Clyde is currently in the process of bringing in additional staffing resource to assist the FOI Team.
5. NHS Greater Glasgow and Clyde confirmed it will now carry out a review as recommended in the Commissioner's letter of 21 February 2019. This has not yet been done at the time of this decision.
6. 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.
7. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to Mrs D's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
8. 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.
9. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to Mrs D's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
10. 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 of FOISA.
11. The Commissioner notes that NHS Greater Glasgow and Clyde intends to provide Mrs D with an apology for its failure to comply.

Decision

The Commissioner finds that Greater Glasgow and Clyde Health Board (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 Mrs D. In particular, NHS Greater Glasgow and Clyde failed to respond to Mrs D'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 Greater Glasgow and Clyde to provide a response to Mrs D's requirement for review, by **25 April 2019**.

Appeal

Should either Mrs D 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

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info