

Decision Notice

Decision 132/2019: The Applicant and Dumfries and Galloway Health Board

Correspondence that is aggressive

Reference No: 201900741

Decision Date: 12 September 2019



Scottish Information
Commissioner

Summary

NHS Dumfries and Galloway was asked whether it held correspondence from a named individual “that is aggressive”. NHS Dumfries and Galloway confirmed that correspondence was held.

During the investigation, NHS Dumfries and Galloway issued a further response.

The Commissioner investigated and found that NHS Dumfries and Galloway had failed to comply with FOISA in responding to the request. This was because the initial response did not confirm whether the correspondence was from the named individual. As a further response was issued during the investigation, which addressed the request, the Commissioner did not require any further action to be taken.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement)

The full text of the statutory provision cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 8 November 2018, the Applicant made a request for information to Dumfries and Galloway Health Board (NHS Dumfries and Galloway). He asked whether it held correspondence from a named individual “that is aggressive”.
2. On 5 January 2019, the Applicant wrote to NHS Dumfries and Galloway and asked it to conduct a review on the basis that it had failed to respond to his request.
3. NHS Dumfries and Galloway notified the Applicant of the outcome of its review on 24 January 2019. It informed the Applicant that it held correspondence “which may be logged/recorded as being aggressive”.
4. On 21 May 2019, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of NHS Dumfries and Galloway’s review because it had not confirmed whether any correspondence held was from the named individual.

Investigation

5. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
6. On 21 June 2019, NHS Dumfries and Galloway was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. NHS Dumfries and Galloway was invited to comment on this application and to answer specific questions.

8. During the investigation, NHS Dumfries and Galloway accepted that the response it had provided on 24 January 2019 had been in general terms and did not respond to the specific terms of the Applicant's request.
9. On 2 August 2019, NHS Dumfries and Galloway issued a further response to the Applicant, answering the specific terms of his request.
10. The Applicant was asked, on 7 August 2019, whether he was content with the response from NHS Dumfries and Galloway, and whether he required a decision to be issued. On 9 August 2019, the Applicant responded and confirmed he still required a decision to be issued.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and NHS Dumfries and Galloway. He is satisfied that no matter of relevance has been overlooked.

Response issued by NHS Dumfries and Galloway

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it.
13. The Commissioner concludes that NHS Dumfries and Galloway did not respond to the specific terms of the Applicant's request when it responded to his requirement for review. Therefore, the Commissioner finds that NHS Dumfries and Galloway failed to respond to the information request in line with section 1(1) of FOISA.
14. NHS Dumfries and Galloway agreed to issue a further review response to the Applicant during the investigation, responding to the specific terms of his request. NHS Dumfries and Galloway did so on 2 August 2019.
15. As the Commissioner is satisfied that NHS Dumfries and Galloway's response of 2 August 2019 did respond to the specific request raised by the Applicant, he does not require NHS Dumfries and Galloway to take any further action in respect of the above failure, in response to the Applicant's application.

Decision

The Commissioner finds that, by not responding to the specific terms of the Applicant's request, Dumfries and Galloway Health Board (NHS Dumfries and Galloway) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (and, in particular, with section 1(1)).

Given that NHS Dumfries and Galloway issued a further specific response to the Applicant during the investigation, the Commissioner does not require NHS Dumfries and Galloway to take any action in respect of this failure, in response to the Applicant's application.

Appeal

Should either the Applicant or NHS Dumfries and Galloway 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.

Margaret Keyse
Head of Enforcement

12 September 2019

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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