

Decision Notice 164/2021

Covid-19 Reports – failure to respond

Applicant: The Applicant

Public authority: Public Health Scotland

Case Ref: 202101194



Scottish Information
Commissioner

Summary

The Applicant asked Public Health Scotland (PHS) for information about the investigation of a Covid-19 outbreak at the Nike Conference in Edinburgh. This decision finds that PHS failed to comply with the Applicant's request for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to PHS on 14 July 2021.
2. PHS responded to the information request on 3 August 2021.
3. On 24 August 2021, the Applicant wrote to PHS requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. The Applicant wrote to the Commissioner on 22 September 2021, stating that she was dissatisfied with PHS's failure to respond to her requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 23 September, PHS was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from PHS. These submissions are considered below.

Commissioner's analysis and findings

8. PHS confirmed that it had received the requirement for review. It explained that it tried to send an acknowledgement to the Applicant on 27 August 2021, via the "whatdotheyknow" (WDTK), but received a failed delivery receipt and was unable to send the acknowledgement to WDTK.
9. PHS acknowledged that it had not responded to the Applicant's requirement for review in time and confirmed that a response has since been sent to the Applicant (4 October 2021). The Commissioner was provided with a copy of the review response.
10. PHS also confirmed that information relating to the request has since been published on its website. The Applicant was notified via WDTK.
11. 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. This is subject to qualifications which are not relevant in this case.
12. It is a matter of fact that PHS 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.
13. As PHS responded to the Applicant's requirement for review on 4 October 2021, the Commissioner does not require it to take any further action in relation to the Applicant's application.
14. The Commissioner recommends that PHS considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that Public Health Scotland (PHS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, PHS failed to respond to the Applicant's requirement for review within the timescales laid down by sections of 21(1) of FOISA.

The Commissioner does not require PHS to take any action in respect of this failure in response to the Applicant's application, given that a response was immediately issued following contact from the Commissioner's office.

Appeal

Should either the Applicant or Public Health Scotland 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.

Claire Stephen
Deputy Head of Enforcement

14 October 2021

Scottish Information Commissioner

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