



Decision Notice 027/2023

NHS Scotland Gender Reassignment Protocol – failure to respond

Applicant: The Applicant

Authority: Forth Valley Health Board

Case Ref: 202300068

Summary

The Applicant asked the Authority for the NHS Scotland Gender Reassignment Protocol. This decision finds that the Authority failed to respond to the request and request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 28 August 2022.
2. The Authority did not respond to the information request.
3. On 13 October 2022, the Applicant wrote to the Authority requiring a review of its failure to respond.
4. Although the Applicant received an acknowledgement from the Authority on 20 October 2022, he did not receive a response to his requirement for review.
5. On 12 January 2023, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 18 January and on 28 February 2023.
8. The Commissioner received submissions from the Authority on 13 March 2023. These submissions are considered below.
9. The Authority acknowledged that it had not responded to the Applicant's information request and requirement for review in time.
10. The Authority explained that the Applicant's request was not received by its Information Governance Unit, and therefore not processed. It confirmed that enquiries had been made within the Authority, but it had not been able to establish what had happened to the request. A search of the relevant office also taken place to locate the request, but again, the Authority had not been able to confirm receipt.
11. The Authority accepted that due to an administrative oversight, the requirement for review was not responded to in time and it apologised to the Applicant for this oversight. On 13 March 2023, the Authority issued a response to the Applicant, providing a copy of the requested information.
12. The Authority said that its staff will be reminded of their obligations under FOISA when an information request is received. The Authority did comment that it had been receiving an unprecedented number of information requests, which had also necessitated a review of its processes.
13. 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.
14. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
15. 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.
16. It is a matter of fact that the Authority 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.
17. The Authority responded to the Applicant's requirement for review on 13 March 2023, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
18. The Commissioner notes that the Authority has also issued an apology to the Applicant in its response of 13 March 2023.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, the Commissioner does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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.

Colin MacFadyen
(Acting) Deputy Head of Enforcement
23 March 2023