

Decision Notice



Decision 112/2010 Christopher Johnstone and Fife Health Board

Failure to respond to requirement for review

Reference No: 201000938
Decision Date: 29 June 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether Fife Health Board (NHS Fife) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Christopher Johnstone.

Background

1. On 21 February 2010, Mr Johnstone wrote to NHS Fife requesting information concerning a security breach that had been mentioned in the 2008/09 annual accounts of NHS Fife. In particular Mr Johnstone requested a copy of a report compiled by external consultants and an associated action plan. NHS Fife acknowledged receipt of Mr Johnstone's request on 22 February 2010.
2. NHS Fife responded on 24 March 2010 refusing to disclose the requested information stating that due to the nature of the investigation, all relevant material was treated as strictly confidential. NHS Fife did not cite any exemptions in this response but explained that the circumstances of the incident formed the basis for ongoing disciplinary action. NHS Fife also explained that the review had been tasked to identify any weaknesses in control systems and suggest remedies and therefore the information was sensitive and not suitable for disclosure.
3. On 24 March 2010, Mr Johnstone wrote to NHS Fife requesting a review of its decision. In particular, Mr Johnstone drew NHS Fife's attention to his concerns regarding the protection of patient data and his belief that any weaknesses in the control systems identified by the review and changes made could be usefully shared across Scotland. He also indicated that from publicly available information he could find no evidence that NHS Fife had implemented any changes.
4. On 29 March 2010, having received no acknowledgement of his request for review, Mr Johnstone wrote to NHS Fife seeking confirmation that it had received his request for review. On 30 March 2010, NHS Fife responded acknowledging receipt of the request for review.
5. Mr Johnstone did not receive a response to his request for review and on 5 May 2010 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



6. The application was validated by establishing that Mr Johnstone had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 28 May 2010, NHS Fife was notified in writing that an application had been received from Mr Johnstone and was invited to comment on the application.
8. On 10 June 2010, NHS Fife wrote to the Commissioner acknowledging that it had failed to provide a response to Mr Johnstone's request for review within 20 working days. It indicated that there was no good reason for this failure and expressed regret at this breach. NHS Fife also indicated that it had subsequently conducted a review of its decision and had, that day, notified Mr Johnstone of the outcome of the review.
9. The investigating officer subsequently confirmed with Mr Johnstone that he had received the outcome of the review. However he remained dissatisfied that it had taken well in excess of 20 working days to receive this response and wished to receive a decision from the Commissioner regarding the technical aspects of the handling of his request by NHS Fife.

Commissioner's analysis and findings

10. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
11. NHS Fife did not provide a response to Mr Johnstone's requirement for review of 24 March 2010 until 10 June 2010, following contact by the investigating officer. Consequently, the Commissioner finds that the Council failed to comply with section 21(1) of FOISA.
12. As NHS Fife subsequently provided Mr Johnstone with a response to his request for review, the Commissioner does not require it to take any further action in relation to this particular breach in response to this decision.



DECISION

The Commissioner finds that Fife Health Board (NHS Fife) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Christopher Johnstone by failing to respond to Mr Johnstone's requirement for review within 20 working days as laid down by section 21(1) of FOISA.

Given that it has subsequently responded to Mr Johnstone's request for review, the Commissioner does not require NHS Fife to take any action in response to this failure in response to this decision.

Appeal

Should either Mr Johnstone or NHS Fife wish to appeal against this decision, there is an 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 notice.

Claire Sigsworth
Deputy Head of Enforcement
29 June 2010



Appendix

Relevant statutory provisions

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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21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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