

Decision Notice



Decision 080/2014 Dr Robbie Coull and Lochgilphead Medical Centre

Furnace and Inverary Medical Practice procurement: failure to respond within statutory timescales

Reference No: 201400533
Decision Date: 08 April 2014

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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Summary

On 19 February 2014, Dr Coull asked Lochgilphead Medical Centre for information about the procurement of the general medical services contract for Furnace/Inverary Medical Practice. This decision finds that Lochgilphead Medical Centre did not provide a proper response to Dr Coull's requirement for review.

Background

Date	Action
19 February 2014	Dr Coull made an information request to Lochgilphead Medical Centre.
27 February 2014	Lochgilphead Medical Centre responded to the information request.
5 March 2014	Dr Coull wrote to Lochgilphead Medical Centre requiring a review of its decision.
5 March 2014	Dr Coull received a response from Lochgilphead Medical Centre to his requirement for review.
6 March 2014	Dr Coull wrote to the Commissioner's Office. Given, the short time between him submitting his requirement for review and Lochgilphead Medical Centre's response to this this, he did not consider a proper review had been carried out. Dr Coull stated that he was dissatisfied with that failure and was applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
26 March 2014	Lochgilphead Medical Centre was notified in writing that an application had been received from Dr Coull and was invited to comment on the application.
7 April 2014	The Commissioner received submissions from Lochgilphead Medical Centre. These submissions are considered below.



Commissioner's analysis and findings

1. Lochgilphead Medical Centre explained that after receiving Dr Coull's requirement for review, a meeting was held with the partners in the Medical Centre who were present on that day. It explained that the meeting did not take long, nor did it take much time to reach a decision. Lochgilphead Medical Centre considered this meeting to constitute a review.
2. 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.
3. The rest of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. Section 21(4) provides for two possible outcomes to the review, where the authority has responded to the request: it may either confirm its original decision, with or without modifications, or it may substitute a different decision for that original decision. Section 21(5) then requires the authority to give the applicant notice of what it has done under section 21(4), with its reasons for reaching that conclusion.
4. The Commissioner acknowledges that Lochgilphead Medical Centre met promptly to consider Dr Coull's requirement for review. She is not, however, satisfied that it considered the requirement for review fully, or that it could be said to have reached one of the outcomes available under section 21(4). It appears to have considered only a point raised by Dr Coull about discussions or communications with NHS Highland managers, rather than the more general dissatisfaction he expressed that he had not been provided with all the information held by the Lochgilphead Medical Centre and falling within the scope of his request. In all the circumstances, she is not satisfied that Lochgilphead Medical Centre can demonstrate that it carried out a complete review as required by section 21.
5. The letter sent to Dr Coull on 5 March 2014 did not either confirm the Practice's original decision in response to Dr Coull's request, or substitute a different decision. It provided no reasons for what it had done on review. Consequently, it did not meet the requirements of section 21(5).
6. Commissioner also finds that the response given by Lochgilphead Medical Practice failed to meet the requirements in section 21(10) of FOISA, which requires the authority to inform the applicant of their rights to apply to the Commissioner and appeal to the Court of Session.
7. The Commissioner requires Lochgilphead Medical Centre to review its response to Dr Coull, in accordance with section 21 of FOISA. She would note that it is generally good practice, in responding to the kind of concern raised by Dr Coull in seeking a review, to carry out further (proportionate) searches for the requested information – and be able to evidence that it has done so.



DECISION

The Commissioner finds that Lochgilphead Medical Centre failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Coull. In particular, she finds that Lochgilphead Medical Centre failed to carry out a complete review in accordance with section 21 of FOISA, or inform Dr Coull of the outcome in accordance with section 21(5) and (10).

The Commissioner requires Lochgilphead Medical Centre to carry out a review in accordance with section 21 of FOISA, and thereafter give Dr Coull notice of the outcome meeting the requirements of section 21(5) and (10), by 23 May 2014.

Appeal

Should either Dr Coull or Lochgilphead Medical Centre wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. The appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Deputy Head of Enforcement
08 April 2014