

# Decision Notice

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## Decision 131/2015: Mr Y and Forth Valley NHS Board

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### Accident and incident forms: failure to respond within statutory timescales

Reference No: 201501277

Decision Date: 17 August 2015



Scottish Information  
Commissioner

## Summary

On 23 February 2015, Mr Y submitted four information requests to Forth Valley NHS Board (NHS Forth Valley) for the accident and incident forms completed by healthcare staff for each week over a four week period. This decision finds that NHS Forth Valley failed to respond to the four requests within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that NHS Forth Valley failed to comply with Mr Y's requirements for review within the timescale set down by FOISA.

The Commissioner ordered NHS Forth Valley to respond to Mr Y's requirement for review in relation to three of his requests.

## Background

Date	Action										
23 February 2015	<p>Mr Y asked NHS Forth Valley for the following information (NHS Forth Valley assigned the following reference numbers to these requests):</p> <table border="1"><thead><tr><th>NHS Forth Valley Reference Number</th><th>Information requested</th></tr></thead><tbody><tr><td>0002166</td><td>Accident and incident forms for 4 February 2012 to 12 February 2012</td></tr><tr><td>0002167</td><td>Accident and incident forms for 13 February 2012 to 21 February 2012</td></tr><tr><td>0002168</td><td>Accident and incident forms for 22 February 2012 to 29 February 2012</td></tr><tr><td>0002169</td><td>Accident and incident forms for 1 March 2012 to 10 March 2012</td></tr></tbody></table>	NHS Forth Valley Reference Number	Information requested	0002166	Accident and incident forms for 4 February 2012 to 12 February 2012	0002167	Accident and incident forms for 13 February 2012 to 21 February 2012	0002168	Accident and incident forms for 22 February 2012 to 29 February 2012	0002169	Accident and incident forms for 1 March 2012 to 10 March 2012
NHS Forth Valley Reference Number	Information requested										
0002166	Accident and incident forms for 4 February 2012 to 12 February 2012										
0002167	Accident and incident forms for 13 February 2012 to 21 February 2012										
0002168	Accident and incident forms for 22 February 2012 to 29 February 2012										
0002169	Accident and incident forms for 1 March 2012 to 10 March 2012										
25 February 2015	NHS Forth Valley sent Mr Y an acknowledgement letter in response to each request (0002166 to 0002169). Each letter stated that a response would be sent not later than 25 March 2015.										
27 March 2015	NHS Forth Valley sent a letter to Mr Y stating that it would not meet the deadlines for response and would forward the information as soon as possible. NHS Forth Valley did not specify which request it was responding to.										
2 May 2015	Mr Y wrote to NHS Forth Valley requiring a review of its failure to respond to his requests.										
7 May 2015	NHS Forth Valley acknowledged Mr Y's letter dated 2 May 2015. NHS Forth Valley acknowledged that the response to requests 0002166 to 0002169 were outstanding.										
7 May 2015	NHS Forth Valley wrote to Mr Y responding to his request for review. NHS Forth Valley accepted that the response to request number 0002166 had gone over the 20 day time limit. It did not make any statement in relation to the other requests, but confirmed that it intended to provide Mr Y with a response to requests 0002166 to 0002169.										

8 July 2015	Mr Y wrote to the Commissioner's Office, stating that he was dissatisfied with NHS Forth Valley's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
29 July 2015	NHS Forth Valley was notified in writing that an application had been received from Mr Y and was invited to comment on the application.
29 July 2015	NHS Forth Valley issued a response to Mr Y in relation request 0002166. It stated that the information was being withheld under a number of exemptions in FOISA. It informed Mr Y, if he was dissatisfied with the response, he could request a review and if he was dissatisfied with the review response, he could make an appeal to the Commissioner.
6 August 2015	NHS Forth Valley issued a response to Mr Y in relation to requests 0002166 to 0002169 (and other requests not the subject of this decision). NHS Forth Valley stated that the review covered requests 0002166 to 0002168 (and other requests not the subject of this decision). It stated that Mr Y had received a response to request 0002166. NHS Forth Valley accepted that it had not responded within the statutory timescale in providing this review response.  NHS Forth Valley informed Mr Y if he was unhappy with the results of the review, he could make an appeal to the Commissioner.
12 August 2015	The Commissioner received submissions from NHS Forth Valley. These submissions are considered below.

## Commissioner's analysis and findings

1. 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.
2. It is a matter of fact that NHS Forth Valley did not provide a response to Mr Y's four requests for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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.
4. Where an applicant has made an information request and received no response, and then made a valid request for review, prompting the authority to issue a response, the response given at that stage has the effect of specifying the outcome of a review. This is because section 21(4) of FOISA sets out what an authority might do when it conducts a review:
  - a) confirm a decision with or without modification,
  - b) substitute a decision, **or**
  - c) reach a decision if none had been made before.

5. Section 19 of FOISA requires that a refusal notice under section 16(1) of FOISA must contain particulars -
  - a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
  - b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).
6. Section 21(10) of FOISA requires a public authority notifying a person of the outcome of its review to advise them of their right to apply for a decision by the Commissioner, and subsequently to make an appeal to the Court of Session.
7. NHS Forth Valley wrote to Mr Y about his requests on three occasions after he made his requirement for review on 2 May 2015: on 7 May 2015, 29 July 2015 and 6 August 2015. Each one of these responses will be considered in turn.

#### **NHS Forth Valley's letter dated 7 May 2015**

8. The Commissioner notes that NHS Forth Valley's letter dated 7 May 2015:
  - refers to all four requests, 0002166 to 0002169.
  - confirms that the response to request 0002166 has gone over the time for response under FOISA, but indicates that this is the request for accident and incident forms for 1 March 2012 to 10 March 2012 (0002169).
  - confirms again that it will ensure responses to requests 0002166 to 0002169 are sent to Mr Y in due course.
  - advises Mr Y that if he is dissatisfied with the review response, he can apply to the Commissioner for a decision.
9. In this case, the Commissioner concludes that NHS Forth Valley's letter of 7 May 2015 does not comply with section 21(4) (as described in paragraph 4 above) and so was not a valid review response. NHS Forth Valley also failed to comply with the requirements of section 21(1) of FOISA.

#### **NHS Forth Valley's letter dated 29 July 2015**

10. The Commissioner notes that NHS Forth Valley's letter dated 29 July 2015:
  - refers only to request 0002166 in which Mr Y asked for accident and incident forms for 4 February 2012 to 12 February 2012, and states that the requested information is exempt under sections 38(1)(b) and 39(1) of FOISA.
  - states that if Mr Y is dissatisfied with the response he can submit a request for review to NHS Forth Valley. If Mr Y is dissatisfied with the review response, he can apply to the Commissioner for a decision.
11. In this case, the Commissioner concludes that NHS Forth Valley's letter of 29 July 2015 provided a response to Mr Y's request 0002166 and was a valid review response in terms of 21(4) of FOISA. The letter was provided outwith the statutory period of 20 working days, so NHS Forth Valley failed to comply with the requirements of section 21(1) of FOISA. Although the letter provided Mr Y with information about his right to appeal to the Commissioner, as

required by section 21(10) of FOISA, it wrongly indicated that he could also submit a further request for review to NHS Forth Valley.

### **NHS Forth Valley's letter dated 6 August 2015**

12. The Commissioner notes that NHS Forth Valley's letter of 6 August 2015:
  - states it is a review of all four requests, 0002166 to 0002169.
  - confirms that the response to these requests has gone over the time limit under FOISA.
  - confirms that a response to 0002166 has been provided, and that there are three outstanding requests: 0002167 to 0002169.
  - states that request 0002169 has been subject to review "which was upheld".
  - states that NHS Forth Valley will provide a response to requests 0002167 to 0002169 as soon as possible.
  - advises Mr Y that if he is dissatisfied with the review results he can make an appeal to the Commissioner for a decision.
13. In this case, the Commissioner concludes that NHS Forth Valley's letter of 6 August 2015, did not comply with section 21(4) and was not a valid review response. The letter was also provided outwith the statutory time period of 20 working days, so NHS Forth Valley failed to comply with the requirements of section 21(1) of FOISA.
14. The Commissioner concludes that NHS Forth Valley has not shown that it has carried out a review of its response (or failure to respond) to requests 0002167, 0002168 and 0002169. She requires it to do so now, and to issue Mr Y with a response which complies with section 21(4) and 21(10) of FOISA.
15. The Commissioner has concerns about the apparent lack of any robust procedure for dealing with multiple requests from a single applicant, as demonstrated by NHS Forth Valley's correspondence with Mr Y. The Commissioner expects NHS Forth Valley to take steps to improve its performance in this respect.

## **Decision**

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The Commissioner finds that Forth Valley NHS Board (NHS Forth Valley) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Y. In particular, NHS Forth Valley failed to respond to Mr Y's four requests for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires NHS Forth Valley to respond to Mr Y's requirement for review in relation to information requests 0002167, 0002168 and 0002169 by **1 October 2015**.

## **Appeal**

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Should either Mr Y or NHS Forth Valley 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.

## **Enforcement**

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If NHS Forth Valley fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that NHS Forth Valley has failed to comply. The Court has the right to inquire into the matter and may deal with NHS Forth Valley as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**17 August 2015**

**Scottish Information Commissioner**

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