

Decision Notice

Decision 015/2019: Mr Colin Kerr and Dumfries and Galloway Health Board

Correspondence from the requester: failure to respond within statutory timescales

Reference No: 201900046

Decision Date: 5 February 2019



Scottish Information
Commissioner

Summary

Dumfries and Galloway Health Board (NHS Dumfries and Galloway) was asked about any correspondence received from the requester that was logged, recorded or reported as containing threatening language.

This decision finds that NHS Dumfries and Galloway failed to respond to the request for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA)

The Commissioner has ordered NHS Dumfries and Galloway to comply with the requirement for review.

Background

Date	Action
16 October 2018	Mr Kerr made an information request to NHS Dumfries and Galloway.
9 November 2018	NHS Dumfries and Galloway responded to the information request.
10 November 2018	Mr Kerr wrote to NHS Dumfries and Galloway requiring a review of its decision.
	Mr Kerr did not receive a response to his requirement for review.
3 January 2019	Mr Kerr wrote to the Commissioner's Office, stating that he was dissatisfied with NHS Dumfries and Galloway's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 January 2019	NHS Dumfries and Galloway was notified in writing that an application had been received from Mr Kerr and was invited to comment on the application.
25 January 2019	The Commissioner received submissions from NHS Dumfries and Galloway. These submissions are considered below.

Commissioner's analysis and findings

1. NHS Dumfries and Galloway confirmed that it had not responded to Mr Kerr's request for review, stating it had not received his letter.
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 Commissioner is required to come to a conclusion, on the balance of probabilities, as to whether Mr Kerr's request for review was received by NHS Dumfries and Galloway. The Commissioner has concluded that although NHS Dumfries and Galloway has not been able to trace this letter, it was likely to have been received; the requirement for review was correctly addressed to the Chief Executive, as instructed in the response Mr Kerr received to his request.

4. The Commissioner has concluded, on the balance of probabilities, that NHS Dumfries and Galloway did not provide a response to Mr Kerr's request for review within 20 working days, and therefore failed to comply with section 21(1) of FOISA.
5. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that NHS Dumfries and Galloway failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.

Decision

The Commissioner finds that Dumfries and Galloway Health Board (NHS Dumfries and Galloway) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Kerr. In particular, NHS Dumfries and Galloway failed to respond to Mr Kerr's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires NHS Dumfries and Galloway to provide a response to Mr Kerr's requirement for review, by **22 March 2019**.

Appeal

Should either Mr Kerr or NHS Dumfries and Galloway 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

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

Alison Davies
Deputy Head of Enforcement

5 February 2019

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