

Decision Notice 035/2022

Incident and accident reports – failure to respond

Applicant: The Applicant

Public authority: Forth Valley Health Board

Case Ref: 202101485



Scottish Information
Commissioner

Summary

The Applicant submitted six information requests to Forth Valley Health Board (NHS Forth Valley) asking for all incident and accident forms, completed by NHS Forth Valley staff, covering the period 1 January to 21 January 2020. This decision finds that NHS Forth Valley failed to respond to the 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 the Applicant's requirements for review within the timescale set down by FOISA.

Background

1. The Applicant made six information requests to NHS Forth Valley: three on 2 August and three on 23 August 2021.
2. NHS Forth Valley issued three separate responses to the information requests of 2 August, on 20 September, 21 September and 1 October 2021.
3. NHS Forth Valley issued three separate responses, to the information requests of 23 August, on 28 September and 1 October 2021.
4. On 11 October 2021, the Applicant wrote to NHS Forth Valley, requiring a review of its decision in respect of all six requests.
5. The Applicant did not receive a response to his requirements for review.
6. On 30 November 2021, the Commissioner received a letter from the Applicant, 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.
7. On 10 January 2022, NHS Forth Valley was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
8. NHS Forth Valley did not provide the Commissioner with any submissions.

Commissioner's analysis and findings

9. 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.
10. It is a matter of fact that NHS Forth Valley did not provide a response to any of the Applicant's requests for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
11. 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.
12. It is a matter of fact that NHS Forth Valley did not provide a response to the Applicant's requirements for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.

14. NHS Forth Valley issued six separate responses to the Applicant's requirement for review, one on 30 November and five on 1 December 2021, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
15. The Commissioner recommends that the NHS Forth Valley considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

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

The Commissioner does not require NHS Forth Valley to take any action in respect of these failures in response to the Applicant's application, given that responses were issued on 30 November and 1 December 2021.

Appeal

Should either the Applicant 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.

Euan McCulloch
Deputy Head of Enforcement

7 April 2022

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