



Scottish Information  
Commissioner

**Decision 043-2006 Mrs Eldrydd Robinson and  
Lothian NHS Board**

***Information about complaints against the Scottish Breast Screening  
Service***

**Applicant: Mrs Eldrydd Robinson  
Authority: Lothian NHS Board  
Case No: 200502785  
Decision Date: 16 March 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 043-2006 Mrs Eldrydd Robinson and Lothian NHS Board

### ***Request for information about complaints against the Scottish Breast Screening Service – information not held (section 17) – failure to comply with section 19 (content of certain notices)***

#### **Facts**

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Mrs Robinson wrote twice to Lothian NHS Board (the Health Board) asking for a range of information.

She asked for the number of complaints received about the Scottish Breast Screening Service at Ardmillan; whether the complaints concerned administrative or clinical issues; and how the complaints were dealt with. Some, but not all, of this information was provided in the Health Board's initial reply.

She asked whether, before April 2002, there was a policy that all women with Lobular Carcinoma in situ should be referred to the Western General hospital. This request was not answered in the Health Board's initial reply.

Mrs Robinson has now received all the information she requested but remains dissatisfied with the Health Board's failure to provide it within the timescales laid down by the Freedom of Information (Scotland) Act 2002 (FOISA).

#### **Outcome**

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The Commissioner found that Lothian NHS Board (the Health Board) had failed to comply fully with the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner did not require any remedial action to be taken by the Health Board but recommended that it took careful note of requirements regarding timescales and content of notices as laid down in FOISA.



## Appeal

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Should either Mrs Robinson or Lothian NHS Board wish to appeal against the Commissioner's 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 of receipt of this notice.

## Background

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1. On 11 May 2005 Mrs Robinson wrote to Lothian NHS Board (the Health Board) with a number of requests for information.
2. The first part of Mrs Robinson's letter made requests relating to the case notes about her treatment by the Scottish Breast Cancer Screening Unit and the Western General Hospital between September 1999 and June 2002. Mrs Robinson was advised that she should use her rights under the Data Protection Act 1998 to access this information and appears to have accepted this.
3. In the second part of her letter of 11 May 2005, Mrs Robinson made seven separate requests for information relating to complaints about the Scottish Breast Screening Service at Ardmillan in the period January 1999 to May 2005.
4. The Health Board replied on 13 June 2005. Its letter provided Mrs Robinson with the number of complaints and specified whether these were clinical or non-clinical. It also told Mrs Robinson how many requests had been received for independent review.
5. Mrs Robinson wrote back on 20 June 2005. She complained that the Health Board had not provided her with the information she had asked for regarding the nature of the complaints made against the Scottish Breast Cancer Screening Unit, or how these complaints had been resolved.
6. In this letter Mrs Robinson made a new information request, asking the Health Board to confirm whether or not there had been a policy in place before April 2002 to refer all women with Lobular Carcinoma in situ (LCIS) to the Western General Hospital.



7. The Health Board wrote to Mrs Robinson on 19 July 2005. It had clearly regarded her letter of 20 June as a request for a review of its response to her letter of 11 May 2005. It provided details of the five non-clinical complaints which had been upheld against the Scottish Breast Screening Service Unit during the period in question, and advised her that no information was available on whether the complainants had been satisfied with the responses received.
8. On 3 August 2005 Mrs Robinson wrote again to the Health Board, this time stating that she was not satisfied with the information previously provided and requiring the Health Board to provide her either with the information requested or an explanation as to why this information was not available. She pointed out that she had been advised that 16 complaints had been made against the Breast Screening Unit during the period in question, but had only received information about the 5 non-clinical complaints.
9. In the same letter she again asked for confirmation whether or not the unit had a policy of referring patients diagnosed with LCIS to the Western General, before April 2002.
10. Mrs Robinson applied to me for a decision on 4 October 2005. Her application expressed her dissatisfaction with the responses received from the Health Board to her letters of 11 May 2005, 20 June 2005, and 3 August 2005.
11. The case was allocated to an investigating officer.

## Investigation

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12. Mrs Robinson's appeal was validated by establishing that she had made her request to a Scottish public authority (i.e. Lothian NHS Board), and had appealed me only after requesting the authority to review its response to her request.
13. Mrs Robinson was advised that she should use her rights under the Data Protection Act 1998 to seek access to her medical notes and other information of which she was the focus. I understand that she accepted this. The investigation and subsequent decision notice would therefore be confined to the requests for information about the complaints made against the Scottish Breast Screening Service (letter of 11 May 2005) and whether the referral policy described in paragraph 6 was in place prior to April 2002 (letter of 20 June 2005).



14. The investigating officer wrote to the Health Board on 21 October 2005, informing it that an appeal had been received and an investigation into the matters raised by Mrs Robinson had begun.

15. The Health Board was asked to provide:

a) details of the 11 clinical complaints received about the Scottish Breast Screening Service Unit since 1999;

b) any information relating to the policy of referring women with LCIS to the Western General Hospital before April 2002;

c) comments on the way in which the Health Board had dealt with Mrs Robinson's information requests.

It was asked whether it considered any exemptions under FOISA to apply to the information requested, and if so, to provide its reasons.

16. The Health Board replied on 9 November 2005. The reply accepted that the Board's letters to Mrs Robinson had not made it sufficiently clear that information relating to the clinical complaints could not be released without breaching the Data Protection Act 1998. The Health Board had now anonymised this information and was willing to release it to Mrs Robinson.

17. The Health Board stated that, regarding the existence of a policy on referring women with LCIS, there was no written policy of referral to the Western General Hospital, but an "informal agreement" had been in place. It acknowledged that, again, its reply to Mrs Robinson could have been clearer.

18. Following discussions with staff from my office, the Health Board wrote again to Mrs Robinson on 23 November 2005, providing anonymised information about the 5 clinical and 11 non-clinical complaints. In addition, the Health Board apologised for failing to make it clear that there was no written policy on Lobular Carcinoma in situ referrals to the Western General Hospital prior to April 2002 although such referrals had been normal practice.

19. Mrs Robinson was then asked by the investigating officer whether this response satisfied her information request. She replied that she was far from satisfied, stating that the Health Board's response of 23 November only provided outcome details for three of the five clinical cases and that she had written for a fourth time to request this information. She was also unhappy about the delay in providing the anonymised information about the complaints: a letter received from the Health Board some six months previously had informed her that the information could be provided if personal details were anonymised.



## The Commissioner's Analysis and Findings

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20. Mrs Robinson has recently confirmed that she has finally received all the information which she requested under FOISA on 11 May 2005. Information relating to her request of 20 June 2005 was provided to her in the Health Board's letter of 2 September 2005.
21. The Health Board has advised me that there was no intention at any stage to withhold information from Mrs Robinson, and I have had sight of internal correspondence which makes it clear that this was the case. However, I have identified the following failures to comply with FOISA in the way the Health Board dealt with her requests.

### Failure to comply with timescales

22. Section 10 of FOISA requires a public authority to respond to an information request within 20 working days. Section 74(2) explains that for the purposes of FOISA, something posted is presumed not to be received until the third day after posting. Mrs Robinson's first request was dated 11 May 2005. Allowing three days for postal delivery, the 20 working days allowed for the response is calculated from Monday 16 May 2005, with the twentieth working day being Friday 10 June 2005. As the Health Board's reply is dated 13 June 2005, there was a failure to comply with section 10 of FOISA.
23. Mrs Robinson wrote again on 20 June 2005, in a letter which the Health Board treated as a request for a review of its reply of 13 June 2005. However, no reply was issued until 19 July 2005, which was again outside the 20 working day timescales laid down in section 10 and (in respect of responding to a request for review) section 21 of FOISA.

### Content of notices / information provided

24. Mrs Robinson has now received all the information she requested from the Health Board on 11 May 2005 and 20 June 2005. However, she has complained to me that it has taken eight months, four letters, and intervention from my Office to achieve this. Even if I accept that this was not the intention of the Health Board, this delay raises questions about the way in which Mrs Robinson's requests for information were dealt with.
25. In her letter of 11 May 2005 Mrs Robinson made a series of requests for information about complaints received by the Scottish Breast Screening Service. The Health Board's response of 13 June 2005 provided some basic statistical information which answered two of her questions in full and provided a partial response to three others. Other questions were left unanswered.



26. Although the Health Board later (19 July 2005) explained that it did not hold information relating to one of the unanswered questions, it did not inform Mrs Robinson of this fact in its response of 13 June 2005. The Health Board therefore failed to comply with section 17 of FOISA, which requires a public authority to inform an applicant in writing that the information is not held within the period laid down by FOISA for complying with a request for information (20 working days).
27. The Health Board also failed to explain to Mrs Robinson why it had provided only a partial reply to some of the questions in her letter of 11 May 2005. In its letter to my Office of 9 November 2005 the Health Board explained that some of the information had been withheld as it was the personal data of complainants who had not given permission for its release. The Health Board accepted that its letters to Mrs Robinson of 13 June and 19 July 2005 had not explained the restrictions imposed by the Data Protection Act 1998 and that it had not cited the exemption in section 38 of FOISA, which allows public authorities to withhold personal information if disclosure would breach the data protection principles.
28. In this respect the Health Board again failed to comply with the requirements of FOISA. Section 16 states that where a public authority withholds information on the grounds that it is exempt from disclosure under FOISA, it must provide the applicant with a refusal notice which specifies which exemption applies and the reasons for applying the exemption.

## **Conclusion**

29. In discussions with my Office, the Health Board has accepted that, whatever its intentions, the replies sent to Mrs Robinson did not fully answer her information requests.
30. I believe that the Health Board has already begun to take on board the changes required in dealing with information requests under FOISA. I do not require any specific remedial action to be taken in respect of its failure to fully comply with FOISA in this case, but I recommend that the Health Board takes careful note of the requirements laid down in FOISA regarding timescales for compliance and content of notices.

## **Decision**

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I find that Lothian NHS Board failed to comply with Part 1 of FOISA in the following respects, as described in paragraphs 22 to 28 above:



- The reply sent to Mrs Robinson's letter of 11 May 2005 did not comply with the timescale laid down in section 10(1) of FOISA or include the information required by sections 16 and 17 of FOISA.
- The reply sent to Mrs Robinson's letter of 20 June 2005 did not comply with section 10(1) of FOISA nor, in respect of responding to a request for review, section 21 of FOISA. It did not include the information required by section 16 of FOISA.

I do not require any remedial action to be taken by the Health Board in respect of this failure.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**16 March 2006**