

Decision Notice 072/2022

Stoma Nurses and procedures – failure to respond

Applicant: The Applicant

Public authority: Lothian Health Board

Case Ref: 202200616



Scottish Information
Commissioner

Summary

The Applicant asked Lothian Health Board (NHS Lothian) for information about Ileostomy, Colostomy and Urostomy procedures along with recruitment and financial details. This decision finds that NHS Lothian failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to NHS Lothian on 17 April 2022.
2. NHS Lothian did not respond to the information request.
3. On 17 May 2022, the Applicant wrote to NHS Lothian requiring a review of its failure to respond.
4. The Applicant received a response to his requirement for review on 18 and 27 May 2022.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with NHS Lothian's failure to respond to his information request on time, and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 30 May 2022, NHS Lothian was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from NHS Lothian on 16 June 2022. These submissions are considered below.

Commissioner's analysis and findings

8. NHS Lothian acknowledged that it had not responded to the Applicant's information request on time.
9. In its submissions, NHS Lothian confirmed that it had included Easter Monday (18 April 2022) as a statutory bank holiday when counting the "20 working day" response time. It acknowledged that Easter Monday should have been counted as a "working day" (in terms of section 73¹ of FOISA).
10. NHS Lothian confirmed that it has taken steps to arrange for its Freedom of Information tracking software to be modified to include the correct statutory bank holiday dates to prevent this failure from occurring again. The Commissioner welcomes the steps being taken.
11. 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.
12. It is a matter of fact that NHS Lothian did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

¹ <https://www.legislation.gov.uk/asp/2002/13/section/73>

13. As NHS Lothian responded to the Applicant's requirement for review on 18 and 27 May 2022, the Commissioner does not require it to take any further action in relation to the Applicant's application in this case.
14. The Commissioner notes that NHS Lothian is willing to issue a letter of apology to the Applicant for its failure to respond to the information request in time. The Commissioner welcomes this action.

Decision

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

The Commissioner does not require NHS Lothian to take any action in respect of this failure, given that a response was issued on 18 and 27 May 2022.

Appeal

Should either the Applicant or NHS Lothian 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.

Jill Walker
Freedom of Information Officer

20 June 2022

Scottish Information Commissioner

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