



Decision Notice 026/2023

Staff suspensions – failure to respond

Applicant: The Applicant

Authority: Dumfries and Galloway Health Board

Case Ref: 202300264

Summary

The Applicant asked the Authority for the five longest periods in which staff had been suspended from work since 2018. This decision finds that the Authority failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 15 November 2022.
2. The Authority responded to the information request on 14 December 2022.
3. On 20 December 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 1 March 2023.

8. The Commissioner received submissions from the Authority on 15 March 2023. These submissions are considered below.
9. The Authority acknowledged that it had not responded to the Applicant's requirement for review in time and apologised for its failure to respond.
10. It explained that the requirement for review had not been logged correctly and had not been passed on to the Freedom of Information Officer to deal with. Therefore, no action had been taken.
11. The Authority explained that it was initiating new procedures to check for any new correspondence relating to FOI to avoid any recurrence.
12. 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.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. The Authority responded to the Applicant's requirement for review on 9 March 2023, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
15. The Commissioner notes that the Authority apologised to the Applicant for its failure to comply.

Decision

The Commissioner finds that the Authority 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, the Authority failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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.

Wendy Snedden
Freedom of Information Officer

22 March 2023