

Decision Notice

Decision 061/2019: Mrs L and NHS Greater Glasgow and Clyde

Barlinne Prison interview: failure to respond within statutory timescales

Reference No: 201900353

Decision Date: 10 April 2019



Scottish Information
Commissioner

Summary

Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) was asked for information about the arrangement of an interview at Barlinnie Prison. The decision finds that NHS Greater Glasgow and Clyde failed to comply with Mrs L's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered NHS Greater Glasgow and Clyde to comply with the requirement for review.

Background

Date	Action
10 September 2018	Mrs L made an information request to NHS Greater Glasgow and Clyde.
8 October 2018	NHS Greater Glasgow and Clyde responded to the information request.
22 November 2018	Mrs L wrote to NHS Greater Glasgow and Clyde, requiring a review in respect of its failure to respond.
30 November 2018	Although Mrs L received an acknowledgement, she did not receive a response to her requirement for review.
27 February 2019	Mrs L wrote to the Commissioner's Office, stating that she was dissatisfied with NHS Greater Glasgow and Clyde's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6 March 2019	NHS Greater Glasgow and Clyde was notified in writing that an application had been received from Mrs L and was invited to comment on the application.
8 April 2019	The Commissioner received submissions from NHS Greater Glasgow and Clyde. These submissions are considered below.

Commissioner's analysis and findings

1. NHS Greater Glasgow and Clyde accepted that it had not responded to Mrs L's requirement for review and that it had thus failed to comply with FOISA. It referred to the number of information requests and requirements for review it had received from Mrs L over recent months.
2. NHS Greater Glasgow and Clyde explained that it had brought in additional staffing resource to help deal with the current volume of requests and confirmed it would now carry out a review in the present case. This has not yet been done at the time of this decision.
3. 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.

4. It is a matter of fact that NHS Greater Glasgow and Clyde did not provide a response to Mrs L's requirement for review within 20 working days, so the Commissioner finds that it 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 Greater Glasgow and Clyde failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
6. The Commissioner notes that NHS Greater Glasgow and Clyde intends to provide Mrs L with an apology for its failure to comply.

Decision

The Commissioner finds that Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs L. In particular, NHS Greater Glasgow and Clyde failed to respond to Mrs L's requirement for review within the timescales laid down by sections 21(1) of FOISA.

The Commissioner requires NHS Greater Glasgow and Clyde to provide a response to Mrs L's requirement for review, by **Tuesday 28 May 2019**.

Appeal

Should either Mrs L or NHS Greater Glasgow and Clyde 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 Greater Glasgow and Clyde fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that NHS Greater Glasgow and Clyde has failed to comply. The Court has the right to inquire into the matter and may deal with NHS Greater Glasgow and Clyde as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

10 April 2019

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