

Decision Notice 090/2020

Roof inspections: failure to respond

Applicant: The Applicant

Public authority: Greater Glasgow & Clyde Health Board

Case Ref: 202000596



Scottish Information
Commissioner

Summary

On 6 January 2020, the Applicant asked Greater Glasgow & Clyde Health Board (NHSGGC) for information about the inspection of roofs at Queen Elizabeth University Hospital. This decision finds that NHSGGC failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that NHSGCC failed to comply with the Applicant's requirement for review within the timescale set down by FOISA and the EIRs.

The Commissioner has ordered NHSGCC to comply with the requirement for review.

Background

Date	Action
6 January 2020	The Applicant made an information request to NHSGGC
	NHSGGC did not respond to the information request.
26 February 2020	The Applicant wrote to NHSGGC, requiring a review of its failure to respond.
	The Applicant did not receive a response to his requirement for review.
1 June 2020	The Applicant wrote to the Commissioner's Office, stating that he was dissatisfied with NHSGGC's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
2 July 2020	NHSGGC was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
15 July 2020	The Commissioner received submissions from NHSGGC. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request that at least some of the information caught by it will be environmental information as defined by regulation 2(1) of the EIRs. In *Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹, the Commissioner confirmed at paragraph 51 that where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
2. 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

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.

3. It is a matter of fact that NHSGGC 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 and regulation 5(2)(a) of the EIRs.
4. 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. The same timescale is laid down by regulation 16(4) of the EIRs.
5. It is a matter of fact that NHSGGC 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 and regulation 16(4) of the EIRs.
6. The remainder of section 21 and regulation 16 set 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 NHSGGC failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 and regulation 16.
7. In its submissions to the Commissioner, NHSGGC fully accepted that the Applicant did not receive a response to his request, or his subsequent request for review, within the relevant statutory timescales and that, on this occasion, NHSGGC has failed to comply with the legislation. It advised that the Applicant was due an unreserved apology (which the Commissioner would agree is desirable) and confirmed it would provide the Applicant with a review outcome.

Decision

The Commissioner finds that Greater Glasgow & Clyde NHS Board (NHSGGC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Applicant. In particular, NHSGGC failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner requires NHSGGC to provide a review outcome to the Applicant, by 14 September 2020.

Appeal

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

Euan McCulloch
Deputy Head of Enforcement

30 July 2020

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