

Decision Notice

Decision 094/2017: Miss Dawn Morrison and Tayside NHS Board

Cardiology Waiting Times: Failure to respond within statutory timescales

Reference No: 201700826

Decision Date: 12 June 2017



Scottish Information
Commissioner

Summary

On 10 May 2017, Tayside NHS Board (NHS Tayside) was asked for information on waiting times for Cardiology outpatient appointments over a five year period.

This decision finds that NHS Tayside failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that NHS Tayside failed to comply with Miss Morrison's requirement for review within the timescale set down by FOISA.

Background

Date	Action
17 February 2017	Miss Morrison made an information request to NHS Tayside.
	NHS Tayside did not respond to the information request.
21 March 2017	Miss Morrison wrote to NHS Tayside requiring a review of its failure to respond.
	Miss Morrison did not receive a response to her requirement for review.
21 March and 3 May 2017	Miss Morrison received updates from NHS Tayside advising that the response to her request was waiting to be signed off by a Director and would be sent once approved.
10 May 2017	Miss Morrison wrote to the Commissioner's Office, stating that she was dissatisfied with NHS Tayside's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
25 May 2017	NHS Tayside was notified in writing that an application had been received from Miss Morrison and was invited to comment on the application.
6 June 2017	The Commissioner received submissions from NHS Tayside. These submissions are considered below.

Commissioner's analysis and findings

1. 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.
2. It is a matter of fact that NHS Tayside did not provide a response to Miss Morrison's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. NHS Tayside accepted that it had failed to provide Miss Morrison with a response to her information request within 20 working days, explaining the delay was due to procedural issues within the sign-off process. A timeline was provided to the Commissioner to show the various delays in the process.

4. NHS Tayside explained that, from January 2017, a new process had been implemented where all freedom of information responses must be signed off by a Director responsible for the respective service.
5. 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.
6. It is a matter of fact that NHS Tayside did not provide a response to Miss Morrison's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. NHS Tayside also accepted that it had failed to recognise Miss Morrison's email of 21 March 2017 as a valid request for review, but had since amended its internal procedure.

NHS Tayside notified the Commissioner that a review response was issued to Miss Morrison on 19 May 2017. A copy was provided to the Commissioner on 6 June 2017.

8. As NHS Tayside responded to Miss Morrison's requirement for review on 19 May 2017, the Commissioner does not require it to take any further action in relation to Miss Morrison's application.
9. The Commissioner recommends that NHS Tayside considers whether it would be appropriate to apologise to Miss Morrison for its failure to comply, given that no apology was included in the review response.

Decision

The Commissioner finds that Tayside NHS Board (NHS Tayside) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Miss Morrison. In particular, NHS Tayside failed to respond to Miss Morrison's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require NHS Tayside to take any action in respect of these failures, in response to Miss Morrison's application, given that it has now provided a response to her requirement for review.

Appeal

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

Alison Davies
Deputy Head of Enforcement

12 June 2017

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