

Decision Notice

Decision 113/2017: Ms Helen McArdle and Grampian Health Board

Significant adverse incidents in maternity units: failure to respond within statutory timescales

Reference No: 201700750

Decision Date: 17 July 2017



Scottish Information
Commissioner

Summary

On 3 January 2017, Ms McArdle asked Grampian Health Board (NHS Grampian) for information about significant adverse incidents in maternity units. This decision finds that NHS Grampian 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 Grampian failed to comply with Ms McArdle's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
3 January 2017	Ms McArdle made an information request to NHS Grampian.
25 January 2017	NHS Grampian mistakenly responded to an earlier information request.
22 March 2017	Ms McArdle wrote to NHS Grampian, requiring a review in respect of its failure to respond.
	Ms McArdle did not receive a response to her requirement for review.
24 April 2017	Ms McArdle wrote to the Commissioner's office, stating that she was dissatisfied with NHS Grampian's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
26 May 2017	NHS Grampian was notified in writing that an application had been received from Ms McArdle and was invited to comment on the application.
09 June 2017 and 28 June 2017	The Commissioner received submissions from NHS Grampian. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, NHS Grampian initially acknowledged that it had failed to provide a response to Ms McArdle's request and requirement for review. It later explained that the failure to respond was attributable to what it described as a long-term shortfall in staff resource (which it confirmed it was addressing through an ongoing recruitment process).
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 subject to qualifications which are not relevant in this case.
3. It is a matter of fact that NHS Grampian did not provide a response to Ms McArdle's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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.

5. It is a matter of fact that NHS Grampian did not provide a response to Ms McArdle's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. 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 Grampian failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
7. The Commissioner recommends that NHS Grampian considers whether it would be appropriate to apologise to Ms McArdle for its failure to comply.

Decision

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

The Commissioner requires NHS Grampian to provide a response to Ms McArdle's requirement for review, by **Friday 25 August 2017**.

Appeal

Should either Ms McArdle or Grampian Health Board 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 Grampian Health Board (NHS Grampian) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that NHS Grampian has failed to comply. The Court has the right to inquire into the matter and may deal with NHS Grampian as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

17 July 2017

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info