

# Decision Notice

---

**Decision 118/2016: Mr Martin Flanagan and Greater Glasgow and Clyde Health Board**

---

**Sale of land at Lennox Castle: Failure to respond within statutory timescales**

Reference No: 201600833

Decision Date: 25 May 2016



Scottish Information  
Commissioner

## Summary

On 11 February 2016, Mr Flanagan asked Greater Glasgow and Clyde Health Board (NHS Greater Glasgow and Clyde) for information about the sale of land at Lennox Castle. This decision finds that NHS Greater Glasgow and Clyde 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 NHS Greater Glasgow and Clyde failed to comply with Mr Flanagan's requirement for review within the timescale set down by FOISA and the EIRs.

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

## Background

Date	Action
11 February 2016	Mr Flanagan made an information request to NHS Greater Glasgow and Clyde.
11 February 2016	Although NHS Greater Glasgow and Clyde provided an acknowledgement, it did not respond to the information request.
17 March 2016	Mr Flanagan wrote to NHS Greater Glasgow and Clyde, requiring a review of its failure to respond.
22 March 2016	Again, although Mr Flanagan received an acknowledgement, he did not receive a response to his requirement for review.
3 May 2016	Mr Flanagan wrote to the Commissioner's Office, stating that he was dissatisfied with NHS Greater Glasgow and Clyde'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.
10 May 2016	NHS Greater Glasgow and Clyde was notified in writing that an application had been received from Mr Flanagan and was invited to comment on the application.
24 May 2016	The Commissioner received submissions from NHS Greater Glasgow and Clyde. 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*<sup>1</sup>, 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 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 NHS Greater Glasgow and Clyde did not provide a response to Mr Flanagan'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 NHS Greater Glasgow and Clyde did not provide a response to Mr Flanagan'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. NHS Greater Glasgow and Clyde acknowledged that it had not responded to Mr Flanagan's request or requirement for review, acknowledging administrative failures in recognising and handling the request. It explained that these were compounded by a number of wider organisational factors.
7. NHS Greater Glasgow and Clyde confirmed that it was taking steps to improve practice, in particular reviewing its monitoring and tracking of requests and reviews. The Commissioner welcomes these steps.
8. The Commissioner also notes that NHS Greater Glasgow and Clyde intends to apologise to Mr Flanagan for its failure to comply.
9. 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 NHS Greater Glasgow and Clyde failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 and regulation 16.

---

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

## 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) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Flanagan. In particular, NHS Greater Glasgow and Clyde failed to respond to Mr Flanagan'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 NHS Greater Glasgow and Clyde to provide a response to Mr Flanagan's requirement for review, by **Monday 11 July 2016**.

## Appeal

---

Should either Mr Flanagan or Greater Glasgow and Clyde 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 Greater Glasgow and Clyde Health Board (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**

**25 May 2016**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**