

Decision Notice



Decision 159/2012 Mr Dermott Egan and Greater Glasgow Health Board

Compliance with required timescales

Reference No: 201200801

Decision Date: 25 September 2012

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Rosemary Agnew

Scottish Information Commissioner

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Summary

This decision considers whether Greater Glasgow Health Board (the Board) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr Egan.

Background

1. This investigation will consider two separate requests for information made to the Board by Mr Egan.

Request 1

2. On 20 April 2011, Mr Egan emailed the Board requesting certain specified information.
3. The Board provided a response to this request on 27 May 2011.
4. Mr Egan subsequently contacted the Board again on a number of occasions, to clarify the scope of his request of 20 April 2011.
5. The Board provided a further response to Mr Egan on 3 August 2011.
6. On 25 August 2011, Mr Egan wrote to the Board requesting a review of its decision. In particular, he expressed concern as to the length of time that it had taken before he received what he considered to be a response to his request, albeit only in part. He believed he was still awaiting a full response and also expressed concern as to the prolonged communications which had been required to reach this point.
7. The Board responded to Mr Egan's requirement for review on 5 December 2011.

Request 2

8. On 15 October 2011, Mr Egan emailed the Board requesting certain specified information.
9. The Board provided a response to this request on 11 November 2011.
10. On 16 November 2012, Mr Egan wrote to the Board requesting a review of its decision. He was concerned that the response he had received was incorrect.



11. The Board responded to Mr Egan's requirement for review on 5 January 2012.
12. Mr Egan wrote to the Commissioner on 23 April 2012, stating that he was dissatisfied with the time taken by the Board to respond to request 1, and with the time taken to respond to his requirements for review in respect of requests 1 and 2, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13. The application was validated by establishing that Mr Egan had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

14. On 14 June 2012, the Board was notified in writing that an application had been received from Mr Egan and was invited to comment on the application.
15. The Board responded on 29 June 2012, acknowledging that it had failed in its duty under Part 1 of FOISA in certain respects.

Request 1

16. In relation to request 1, which it received on 26 April 2011, the Board advised that it had responded to Mr Egan on 27 May 2011.
17. The Board explained that Mr Egan had sought clarification in relation to the accuracy of the information provided in the response of 27 May 2011. In the circumstances, it had agreed to re-check and clarify the information, with the intention of providing an amended response if required. A range of communication had followed on the clarity of what was to be provided, and it was not until 3 August 2011 that an amended response was sent to Mr Egan.
18. In the circumstances, the Board did not accept that Mr Egan was only provided with a final, substantive response to his request on 3 August 2011. It believed such a response had been sent to him on 27 May 2011.
19. In relation to the requirement for review submitted in respect of request 1, the Board explained that this was received the day after the Head of Board Administration (who was responsible for the review process) commenced a period of annual leave, and due to an administrative oversight it was not acknowledged until 9 September 2011.



20. The Board also explained that an email message was sent to Mr Egan on 3 November 2011, in which the Head of Board Administration offered his profuse apologies for the delay in communicating. It identified factors contributing to the delay as including two periods of annual leave in a short period, and an inability (due to staff turnover) to follow the Board's policy of a Non-Executive Member being trained and able to take forward the review. Subsequently, training and support had been provided to a Non-Executive Member with a view to carrying out the review, Mr Egan being provided with the outcome of that review on 5 December 2012.
21. The Board acknowledged that there had been procedural breaches in failing to adhere to the relevant timescales.

Request 2

22. In relation to the requirement for review made by Mr Egan in respect of request 2, the Board explained that this was received on 11 November 2011. Referring to certain correspondence, it believed it had reached agreement with Mr Egan that if the requested information could be provided by 16 November 2011, then there would be no need for it to proceed with the review.
23. The Board acknowledged that the information was not provided to Mr Egan by 16 November 2011, with the result that a review was required. Following a process of clarification in relation to the purpose of the review, which was finalised on 22 November 2011, the review had been undertaken (by the Non-Executive Member of the Board referred to in paragraph 20 above).
24. While acknowledging the challenges this presented in meeting timescales, the Board emphasised the importance it attached to bringing genuine independence to carrying out a review, by involving a Non-Executive Member of the Board in the process. In this connection, it noted that Non-Executive Members were normally expected to be involved in the business of the Board for an average of approximately eight hours per week (while pointing out that it now had three additional Non-Executive Members trained to carry out reviews).
25. The Board acknowledged its failures to meet the required timescales in responding to the two requirements for review submitted by Mr Egan, while noting the considerable volume of communications it had received in relation to the general subject matter covered by Mr Egan's requests. It identified improved back-up arrangements for periods of annual leave and other absence, and undertook to initiate further discussions within its FOI Steering Group to see how further improvements could be made (without sacrificing the independence highlighted in the previous paragraph).

Commissioner's analysis and findings

26. 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, subject to certain exceptions which are not relevant in this case.



27. Having considered the submissions received from the Board, together with the copies of correspondence between it and Mr Egan, the Commissioner is satisfied that the response provided to Mr Egan on 27 May 2011 was a response to his request of 20 April 2011, for the purposes of section 1(1) of FOISA. There was, therefore, a failure to comply with section 10(1) of FOISA in this respect, albeit not as significant a failure as Mr Egan has identified.
28. If not satisfied with the response provided by the Board on 27 May 2011, Mr Egan could have requested a review. He was advised of this in the 27 May response. However, the Board could perhaps have made the progress of this case rather more straightforward by adhering to the position that this was the appropriate course of action in its subsequent communications with Mr Egan.
29. 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, subject to certain exceptions which are not relevant in this case.
30. Since the Board did not provide a response to Mr Egan's requirements for review in relation to requests 1 and 2 within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA in both cases.
31. The Commissioner notes that the Board has acknowledged the deficiencies in its responses in this case, and is satisfied that it is taking steps to ensure that similar breaches do not occur in future.

DECISION

The Commissioner finds that Greater Glasgow Health Board failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Egan, in particular by failing to respond to Mr Egan's request for information in request 1, and his requirements for review in relation to requests 1 and 2, within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that a response was provided to both of Mr Egan's requirements for review and the Board is taking steps to ensure that these breaches will not be repeated, the Commissioner does not require the Board to take any action in respect to these failures in response to Mr Egan's application.



Appeal

Should either Mr Egan or Greater Glasgow Health Board wish to appeal against this decision, there is an 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 notice.

Euan McCulloch
Deputy Head of Enforcement
25 September 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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