

Decision Notice 161/2020

Anti-libidinal drugs trial – failure to respond

The Applicant

Public authority: Greater Glasgow & Clyde Health Board

Case Ref: 202001113



Scottish Information
Commissioner

Summary

The Applicant asked Greater Glasgow & Clyde Health Board (NHSGGC) for information about an anti-libidinal drugs trial. This decision finds that NHSGGC failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

1. The Applicant made an information request to NHSGGC on 19 May 2020.
2. NHSGGC responded to the information request on 12 June 2020.
3. On 18 June 2020, the Applicant wrote to NHSGGC, requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with NHSGGC's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 12 October 2020, NHSGGC was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. In response, NHSGGC acknowledged that it had failed to respond to the applicant's request for a review, with an explanation. It confirmed that a review would be undertaken and an apology issued to the applicant.

Commissioner's analysis and findings

8. 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.
9. In Part 2 of Schedule 6 to the Coronavirus (Scotland) Act 2020, paragraph 6 permits the Commissioner to disregard a Scottish public authority's failure to comply with the above timescale, where he is satisfied that the failure was due to, among other things, the effect of coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effect of coronavirus). Any such failure must be reasonable in all the circumstances, the primary consideration in assessing what is reasonable being the public interest in responding to requests promptly.
10. NHSGGC explained the impact on its FoI function of staff being diverted away to work related to the pandemic. While the Commissioner has a degree of sympathy with this, he is not satisfied that it explains the extremely lengthy delay in responding to the requirement for review in this case. It is now nearly six months since NHSGGC received that requirement, and the authority has been unable to confirm whether it took any action at all in relation to a review in the period of nearly four months before it was notified of an application to the Commissioner. In all the circumstances, bearing in mind the public interest in responding promptly, the Commissioner cannot regard the delay in this case as reasonable.

11. It is a matter of fact that NHSGGC did not provide a response to the Applicant's requirement for review within 20 working days and, in all the circumstances, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. 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 NHSGGC failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
13. The Commissioner notes that NHSGGC intends to apologise to the Applicant for its failure to comply. He would recommend that it does so.

Decision

The Commissioner finds that Greater Glasgow and Clyde Health Board (NHSGGC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, NHSGGC failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires NHSGGC to issue a review response, by 25 January 2021.

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

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