



Decision Notice 150/2024

Information sharing between the National Health Service and the Scottish Prison Service – failure to respond

Applicant: The Applicant

Authority: Forth Valley Health Board

Case Ref: 202400566

Summary

The Applicant asked the Authority for information about the sharing of information with the Scottish Prison Service. This decision finds that the Authority failed to respond to the Applicant's request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 8 January 2024.
2. The Authority did not respond to the information request.
3. On 28 February 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 16 April 2024, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 8 May 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority submitted that it had no record of receiving the original request or the request for review. However, the Authority explained that, due to a recent turnover of staff, some errors had been identified where tasks had not been completed as expected.
10. The Authority could not categorically confirm that the correspondence was not received, therefore, on the balance of probabilities, the Commissioner finds that the Authority did receive the request and requirement for review.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. 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.
14. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
16. As the Authority responded to the Applicant's requirement for review on 4 July 2024, the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the Authority's review response of 4 July 2024 contains an explanation for the possible administrative error and an apology to the Applicant for the delay in dealing with his information request.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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.

Jill Walker
Deputy Head of Enforcement

10 July 2024