

Decision Notice

Decision 058/2017: Ms Jackie Baillie MSP and the Scottish Ministers

Vale of Leven Community Maternity Unit: Failure to respond within statutory timescales

Reference No: 201700560

Decision Date: 25 April 2017



Scottish Information
Commissioner

Summary

The Scottish Ministers (the Ministers) were asked for a list of the meetings the Cabinet Secretary for Health and Sport and the Chair/Chief Executive of NHS Greater Glasgow and Clyde from May 2016 when the Vale of Leven Community Maternity Unit was discussed, and for communications relating to these meetings. The Ministers were also asked for communications between the Scottish Government, its ministers and officials and NHS Greater Glasgow and Clyde regarding marketing activity to promote the Vale of Leven Community Maternity Unit.

This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Ministers failed to comply with Ms Baillie's requirement for review within the timescale set down by FOISA.

Background

Date	Action
20 December 2016	Ms Baillie made an information request to the Ministers.
	The Ministers did not respond to the information request.
31 January 2017	Ms Baillie contacted the Ministers to complain that the response was overdue.
1 February 2017	Ms Baillie received an apology for the delay.
17 February 2017	Ms Baillie wrote to the Ministers requiring a review of their failure to respond.
22 February 2017	Ms Baillie received an acknowledgement to her requirement for review.
	Ms Baillie did not receive a response to her requirement for review.
21 March 2017	Ms Baillie wrote to the Commissioner's Office, stating that she was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5 April 2017	The Ministers were notified in writing that an application had been received from Ms Baillie and were invited to comment on the application.
24 April 2017	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. 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

2. It is a matter of fact that the Ministers did not provide a response to Ms Baillie's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
3. 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.
4. The Ministers notified the Commissioner that a response was issued to Ms Baillie on 24 April 2017. A copy was provided to the Commissioner.
5. It is a matter of fact that the Ministers did not provide a response to Ms Baillie's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
6. As the Ministers responded to Ms Baillie's requirement for review on 24 April 2017, the Commissioner does not require them to take any further action in relation to Ms Baillie's application.
7. The Commissioner also notes that the Ministers apologised in their review outcome for their failure to respond within the statutory timescales.

Decision

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

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to Ms Baillie's application, given that a response has now been issued.

Appeal

Should either Ms Baillie or the Scottish Ministers 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.

Alison Davies
Deputy Head of Enforcement

25 April 2017

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