



Delay in responding to request for information about transferrals between hospitals

Legislation	Official Information Act 1982, ss 15(1), 28(1)(a), 30(1)(b); Ombudsmen Act 1975, ss 22(1)(a)
Agency	Southern District Health Board
Ombudsman	Peter Boshier
Case number(s)	563420
Date	March 2022

Failure by the Southern District Health Board to make and communicate its decision on a request for official information – this appeared to be contrary to law – deemed to be a refusal under s 28(1)(a) OIA – investigation of deemed refusal commenced

Background

On 18 February 2021, the Ministry of Health (the Ministry) received a request for official information under the Official Information Act 1982 (OIA), relating to transferrals from Southland Hospital to Dunedin Hospital between 2016 and 2020. The next day, the Ministry confirmed with the Southern District Health Board (the Board) that the requested information was held by the Board. On the same day, the Ministry transferred the request to the Board and advised the requester of the transfer decision.

On 28 September 2021, the requester emailed the Board about the lack of response to her request. The requestor, now complainant, made a complaint to the Chief Ombudsman on the same day. On 30 September 2021, the complainant advised the Ombudsman she had received an acknowledgement from the Board that indicated she would receive a decision on her request by 28 October 2021 at the latest.

Preliminary inquiries and investigation

The Board confirmed that it had received the transferred request on 19 February 2021, and accepted there had been a delay in communicating a decision to the complainant. The Board explained to the Ombudsman that the request had not been logged into its OIA processing system until receiving the complainant's 28 September 2021 email. The Board had also communicated a decision on the request to the complainant on 9 November 2021.

The Board apologised to the complainant for the delay, but did not offer any explanation as to the circumstances of the delay. The Board also indicated to the complainant that the request had been received on 30 September 2021, despite the Board having confirmed to the Ombudsman that the request was received on 19 February 2021.

Under section 15(1) of the OIA, agencies must make and communicate the decision on an official information request as soon as reasonably practicable and no later than 20 working days after it was received, unless that time limit is extended in accordance with section 15A of the OIA.

The Ombudsman asked the Board why it had taken a further 30 working days from the day that the complainant had contacted the Board for a decision to be made and communicated to the complainant, and whether the Board was intending to provide a full explanation for the delay to the complainant.

The Board confirmed that upon receiving the September 2021 email from the complainant, the request was logged and added to the OIA processing queue without priority. The Board offered the Ombudsman a further explanation as to the circumstances that led to the delay, but did not provide the same explanation to the complainant.

Outcome

Noting a significant delay in making and communicating a decision to the complainant, the Ombudsman formed the opinion that the Board acted '*contrary to law*'¹ by failing to comply with section 15(1) of the OIA within the 20 working-day statutory timeframe.

Also, given the Board's advice to the complainant as to when the request was received, the Board not affording the outstanding request priority in its workload queue, and the Board's lack of a proper explanation given to the complainant, the Ombudsman recommended that the Board:

1. Provide the complainant with a full explanation as to the circumstances that resulted in the delay in responding to her request; and
2. In future prioritise its response to any additional outstanding OIA requests not initially logged or actioned appropriately.

Subsequent to the Ombudsman's opinion, the Board wrote to the complainant with a full explanation as to the circumstances that resulted in the delay in responding to her request.

¹ See s 30(1)(b) OIA and s 22(1)(a) Ombudsmen Act.

The Board also temporarily allocated an additional two staff members to work alongside its OIA coordinator to ensure that any outstanding requests were addressed and treated with priority while maintaining the capacity to respond to any new requests as per the statutory obligations of the OIA.

This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.