

Decision Notice



Decision 004/2010 Mr Robert Hogg and City of Edinburgh Council

Failure to respond to request within timescale

Reference No: 200901918

Decision Date: 14 January 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether the City of Edinburgh Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Hogg.

Background

1. On 10 August 2009, Mr Hogg wrote to the Council requesting the following information:
A copy of the legal advice to which reference is made in the report about Freeland's Road, Ratho, that was submitted to the meeting [Planning Committee Meeting of 6th August 2009] by the Director of City Development.
2. The Council provided a letter to Mr Hogg on 14 August 2009, acknowledging his request and advising that a response would be provided by not later than 10 September 2009.
3. No response was received by that date and Mr Hogg submitted a request for a review to the Council on 14 September 2009, asking that it review its failure to respond to his request within the timescale provided in the Act.
4. On 18 September 2009, the Council responded to Mr Hogg's request.
5. Mr Hogg wrote to the Commissioner's Office on 3 November 2009, stating that he was dissatisfied with the Council's failure to respond to his request within 20 working days also with its failure to respond to his request for review, applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Hogg had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

7. On 2 December 2009, the Council was notified in writing that an application had been received from Mr Hogg and was invited to comment on the application as required by section 49(3)(a) of FOISA. It was also provided with a copy of Mr Hogg's application.
8. The Council was asked to comment on the alleged procedural breaches and not on whether the information requested should have been disclosed.
9. In its response the Council set out the timeline regarding Mr Hogg's request and its response to this. It acknowledged in the circumstances (no relevant information actually being held by the Council) that it was not clear why it took 26 working days to produce a formal response to Mr Hogg. It explained that there appeared to have been a breakdown in communication between the officers involved and advised that it had taken steps to ensure that these officers were aware of the importance of ensuring this did not happen again.
10. The Council advised that it would write to Mr Hogg to inform him of the reasons underlying its failure to respond and to apologise for any inconvenience he may have suffered.

Commissioner's analysis and findings

Court of Session Opinion – requests for documents

11. The Commissioner notes that the information request by Mr Hogg was for a copy of a document. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA provides a right to information, not documents. However, the Court said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
12. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Hogg and the Council that the Council questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Council has subsequently had with the Commissioner that the Council was unclear as to what the information request sought.



13. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.
14. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
15. The Council responded to Mr Hogg's request for information by replying on 18 September 2009. The Commissioner therefore finds that the Council failed to comply with Mr Hogg's request for information of 10 August 2009 within the 20 working days allowed by section 10(1) of FOISA. He notes the Council's apology for this failure and its assurance that remedial action has been taken.
16. The Commissioner has considered Mr Hogg's assertion that the Council failed to respond to his request for review. In fact, it is clear that the Council had received the request for review before writing to him in response to his request. That response of 18 September 2009 met the requirements for a review response set out in section 21(4)(c) of FOISA: Mr Hogg's complaint was that no decision had been reached on his original request and the 18 September letter communicated the relevant decision, within the 20 working days allowed by section 21(1) of FOISA. In the circumstances, the Commissioner cannot find that the Council failed to respond to Mr Hogg's request for review.

DECISION

The Commissioner finds that the City of Edinburgh Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Hogg. In particular, it failed to provide a response to Mr Hogg's request for information within the timescale laid down by sections 10(1) of FOISA. It did, however, provide a response to Mr Hogg's request for review in accordance with the requirements of section 21 of FOISA.

Given the Council's eventual response to Mr Hogg, the Commissioner does not (in response to this particular application) require the Council to take any action in respect of the breach identified in this decision.



Appeal

Should either Mr Hogg or the City of Edinburgh Council 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
14 January 2010



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

...

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.