

Decision Notice



Decision 013/2010 Matthew Clark and Inverclyde Council

Failure to respond to request and request for review

Reference No: 201000039

Decision Date: 28 January 2010

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

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

Background

1. On 7 October 2009, Mr Clark wrote to the Council requesting the following information:
 - a. "The number of staff employed by your organisation paid more than £100,000 per annum;
 - b. The number of staff employed by your organisation paid between £80,000 and £100,000 per annum;
 - c. The number of staff employed by your organisation paid less than £80,000 per annum;
 - d. The total salary bill for the group of staff in (a);
 - e. The total salary bill for the group of staff in (b);
 - f. The total salary bill for the group of staff in (c)."
2. The Council responded on 8 October 2009 confirming receipt of the request and indicating a response would be sent within 20 working days.
3. On 16 November 2009, Mr Clark wrote to the Council requesting a review of its handling of this request. In particular, Mr Clark drew the Council's attention to the fact that he was yet to receive a substantive response to his request sent on 7 October 2009.
4. On 17 November 2009 the Council responded confirming receipt of the request for review and indicating that it had asked the service concerned to respond to him at the earliest opportunity.
5. Mr Clark did not receive any further response to his request for review and on 22 December 2009 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



6. The application was validated by establishing that Mr Clark 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 12 January 2010, the Council was notified in writing that an application had been received from Mr Clark 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 Clark's request and request for review.
8. The Council responded on 26 January 2009, confirming that it had received Mr Clark's request and request for review. The Council admitted that it had failed to respond to Mr Clark's request and request for review within the statutory timescales laid down in FOISA due to an administration error. The Council confirmed that on receipt of an information notice from the Commissioner it had conducted a review and subsequently provided Mr Clark with the information he had requested.
9. The investigating officer contacted Mr Clark and confirmed that he had received the information requested from the Council however he remained dissatisfied with the manner in which his request and request for review had been handled.

Commissioner's analysis and findings

10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
11. The Council did not provide a substantive response to Mr Clark's request of 7 October 2009.
12. The Commissioner therefore finds that the Council failed to respond to Mrs Clark's request for information of 7 October 2009, within the 20 working days allowed under section 10(1) of FOISA.
13. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.



14. In this case, the Council acknowledged that it did not carry out a review until it received an information notice from the Commissioner following Mr Clark's application. It did not therefore respond to Mrs Clark's request for review, within the 20 working days allowed under section 21(1) of FOISA. It has apologised to Mr Clark for this failure.
15. The Commissioner notes that a substantive response, including all of the information requested, was provided to Mr Clark on 26 January 2009. In the circumstances, he does not require any action to be taken in relation to these breaches in response to this decision.

DECISION

The Commissioner finds that Inverclyde Council (the 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 Clark, in particular by failing to respond to Mr Clark's request for information and request for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

As a substantive response has now been provided to Mr Clark, the Commissioner does not require the Council to take any action in relation to these breaches in response to this decision.

Appeal

Should either Mr Clark or the 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.

Claire Sigsworth
Deputy Head of Enforcement
28 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
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

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.

...