

Decision Notice



Decision 014/2010 Mr John Mohan and Dundee City Council

Failure to respond to request and request for a review within timescales

Reference No: 200901612

Decision Date: 29 January 2010

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

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

Background

1. On 25 May 2009, Mr Mohan wrote to the Council requesting the following information:
Copies of any documents pertaining to the work undertaken to ensure that the Logie (former Harris annexe) site can
 - a. Accommodate, without dispensation being sought, the maximum design capacity of the proposed St Joseph/Park Place primary school(s).
 - b. Accommodate, without dispensation being sought, the projected pupil role of the proposed St Joseph/Park Place primary school(s).
 - c. Accommodate, without dispensation being sought, the playing field area required by the proposed St Joseph/Park Place primary school(s).
2. The Council acknowledged Mr Mohan's request on 26 May 2009.
3. Mr Mohan did not receive a response to his request and on 25 June 2009 wrote to the Council asking that it review its failure to respond to his request within 20 working days.
4. Mr Mohan did not receive a response to his request for review and on 10 September 2009 wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond to his request and request for a review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Mohan 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

6. On 9 November 2009, the Council was notified in writing that an application had been received from Mr Mohan and invited to comment on the application as required by section 49(3)(a) of FOISA. It was also provided with a copy of Mr Mohan's application.
7. Specifically, the Council was asked to comment on the alleged procedural breaches and not on whether the information requested should have been disclosed.
8. In its response, the Council explained that, regrettably and as a result of an oversight, Mr Mohan's original request and his request for a review were not answered. It indicated that it was willing to write to Mr Mohan to apologise for the oversight and provide him with a response.
9. A response was provided to Mr Mohan on 22 December 2009, following which Mr Mohan indicated that he still wished a decision from the Commissioner on the Council's earlier failure to respond.

Commissioner's analysis and findings

Court of Session Opinion – requests for documents

10. The Commissioner notes that the information request by Mr Mohan was for copies of documents. 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.
11. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Mohan 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.
12. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.



13. 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.
14. The Council did not provide a response to Mr Mohan's request within that timescale.
15. The Commissioner therefore finds that the Council failed to comply with section 10(1) of FOISA in dealing with Mr Mohan's request.
16. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to certain exceptions which are not relevant in this case.
17. The Council did not provide a response to Mr Mohan's requirement for review within that timescale.
18. The Commissioner therefore finds that the Council failed to comply with section 21(1) of FOISA in dealing with Mr Mohan's requirement for review.
19. The Commissioner notes the Council's acknowledgement of these failures and its subsequent response to Mr Mohan.

DECISION

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

Given that the Council has now provided a response to Mr Mohan's request for a review, the Commissioner does not require the Council to take any action in respect of these failures in response to this particular application.



Appeal

Should either Mr Mohan or Dundee City 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
29 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.

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15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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.

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