

Decision Notice



Decision 029/2011 Mr Cairns and the Scottish Legal Complaints Commission

Failure to respond to request and requirement for review

Reference No: 201002284

Decision Date: 14 February 2011

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether the Scottish Legal Complaints Commission (the SLCC) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Cairns.

Background

1. On 28 October 2010, Mr Cairns wrote to the SLCC requesting the identity of any solicitor or advocate involved in preparing the Reasons for the Decision in a specified case.
2. The SLCC did not respond to this request and on 15 December 2010 Mr Cairns wrote to the SLCC requesting a review.
3. Mr Cairns did not receive any response to this requirement for review.
4. On 17 December 2010 Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the SLCC's failure to respond and applying for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Cairns 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.
6. The case was then allocated to an investigating officer.

Investigation

7. On 22 December 2010, the SLCC was notified in writing that an application had been received from Mr Cairns and was invited to comment on the application as required by section 49(3)(a) of FOISA.



8. The SLCC responded on 23 January 2011, confirming that it had received both the request and the requirement for review. It explained that the request had been dealt with as ongoing correspondence in connection with complaints, rather than as a request under FOISA. It acknowledged that it could have been dealt with as a request under FOISA, advising that its failure to do so had not been a deliberate omission.

Commissioner's analysis and findings

9. 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, subject to certain exceptions which are not relevant in this case.
10. The SLCC acknowledged that it did not provide a response to Mr Cairns' request of 28 October 2010. Having considered the terms of that request and of section 8 of FOISA, the Commissioner can identify no basis for dealing with this request other than as a request for information under section 1(1) of FOISA.
11. The Commissioner therefore finds that the SLCC failed to respond to Mr Cairns' request for information within the 20 working days allowed under section 10(1) of FOISA.
12. The Council did not respond to Mr Cairns' letter of 15 December 2010. There would appear to be no basis for dealing with this letter other than as a requirement for review under section 20(1) of FOISA.
13. The Commissioner therefore finds that the SLCC failed to respond to Mr Cairns' requirement for review within the 20 working days allowed under section 21(1) of FOISA. The full provisions of section 21, which govern the carrying out of a review, are set out in the Appendix below.
14. The Commissioner requires the SLCC to comply with Mr Cairns' requirement for review, in accordance with section 21 of FOISA.



DECISION

The Commissioner finds that the Scottish Legal Complaints Commission (the SLCC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Cairns, in particular by failing to respond to Mr Cairns' request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the SLCC to comply with Mr Cairns' requirement for review, in accordance with section 21 of FOISA, by 31 March 2011.

Appeal

Should either Mr Cairns or the SLCC 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 February 2011



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
 - (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph), a request is to be treated as made in writing where the text of the request is-
 - (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.

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

...

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- (2) A requirement under subsection (1) is referred to in this Act as a "requirement for review".
- (3) A requirement for review must-
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).
- (4) For the purposes of paragraph (a) of subsection (3) (and without prejudice to the generality of that paragraph), a requirement for review is treated as made in writing where the text of the requirement is as mentioned in paragraphs (a) to (c) of section 8(2).
- (5) Subject to subsection (6), a requirement for review must be made by not later than the fortieth working day after-
 - (a) the expiry of the time allowed by or by virtue of section 10 for complying with the request; or
 - (b) in a case where the authority purports under this Act-
 - (i) to comply with a request for information; or
 - (ii) to give the applicant a fees notice, a refusal notice or a notice under section 17(1) that information is not held,



but does so outwith that time, the receipt by the applicant of the information provided or, as the case may be, the notice.

- (6) A Scottish public authority may comply with a requirement for review made after the expiry of the time allowed by subsection (5) for making such a requirement if it considers it appropriate to do so.
- (7) The Scottish Ministers may by regulations provide that subsections (5) and (6) are to have effect as if the reference in subsection (5) to the fortieth working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (8) Regulations under subsection (7) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (9) In subsection (1), the reference to "actions" and "decisions" includes inaction and failure to reach a decision.

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.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (7) Regulations under subsection (6) may-
- (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
- (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.