

Decision Notice



Decision 048/2009 Mr Stewart MacKenzie and the Scottish Legal Complaints Commission

Failure to respond to a request within the required timescale

Reference No: 200900470
Decision Date: 16 April 2009

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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 particular the requisite timescales) in responding to an information request made by Mr MacKenzie.

Background

1. On 9 December 2008, Mr MacKenzie sent a faxed letter to the SLCC requesting the following information: “copies of the two PI Insurance Policies referred to at 3.6 of the Minutes of the SLCC meeting of 27th October 2008, and copies of all correspondence between the SLCC and the Insurance Brokers who were involved in the two PI Insurance Policies”.
2. The SLCC replied to Mr MacKenzie on 11 December 2008, acknowledging his request and stating that under the terms of FOISA he would receive a response within 20 working days or by Friday 16 January 2009.
3. Mr Mackenzie states that the SLCC contacted him by telephone shortly before 16 January 2009, when he was advised that the deadline of 16 January 2009 would not be met. Whilst he acknowledges that he informed the SLCC not to worry about such a delay, he states that he did so on the understanding that the response would only be a few days late. The SLCC, however, has noted the relevant telephone call as taking place on 21 January 2009.
4. On 2 February 2009 and again on 5 February 2009, Mr MacKenzie faxed intimation to the SLCC that no response had yet been received.
5. On 24 February 2009, Mr MacKenzie wrote to the SLCC requesting a review of its handling of his request for information. In particular, Mr MacKenzie drew the SLCC’s attention to the fact that despite numerous telephone calls and assurances that his request was being responded to, no such response had been received.
6. The SLCC responded to Mr MacKenzie’s request for information on 26 February 2009. In its response the SLCC provided some information to Mr MacKenzie which would address his request, but withheld other information and relied on exemptions in sections 30, 33, 36 and 38 of FOISA for doing so.



7. A response to Mr MacKenzie's request for a review was provided to him by the SLCC on 27 February 2009. In its response the SLCC explained that it was unfortunate that Mr MacKenzie's request for information had not been responded to within the statutory period, but understood that the response to his request had been sent to him by post the day before. The response from the SLCC did not inform Mr MacKenzie of his right to appeal to the Commissioner if he was dissatisfied with it.
8. On 11 March 2009, Mr MacKenzie wrote to the Commissioner's office, stating that he was dissatisfied with the way in which the SLCC had dealt with his request for information and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. In particular Mr MacKenzie indicated that while he was satisfied with the content of SLCC's response to his request, he was dissatisfied with the amount of time taken to supply him with the information, the SLCC's failure to respond to his letters and telephone calls, and the review response he had received from the SLCC. He was unhappy with the review response as it gave no apology, but simply provided various excuses for the delay and made no statement of appreciation of the very considerable delay in providing the information beyond the statutory timescale.
9. The application was validated by establishing that Mr MacKenzie 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

10. On 17 March 2009, the SLCC was notified in writing that an application had been received from Mr MacKenzie and invited to comment on the application, as required by section 49(3)(a) of FOISA.
11. The SLCC responded on 26 March 2009, confirming that it had received Mr MacKenzie's request for information on 10 December 2008 and that in addition to this request a further two similar requests had been received from Mr MacKenzie in a relatively short space of time. The SLCC advised that as these requests were received so closely together there was a serious impact on its ability to respond, particularly due to the difficulties it experienced in locating the information in question, taking account of the timing of the request in relation to its establishment.
12. However, the SLCC accepted that the response to Mr MacKenzie's request for information was delayed and apologised for this. It confirmed that it was taking (and outlined) active measures to deal effectively and efficiently with future requests for information under FOISA.



Commissioner's analysis and findings

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
14. The SLCC acknowledged that having received Mr MacKenzie's request for information dated 9 December 2008, it did not respond until 26 February 2009.
15. The Commissioner therefore finds that the SLCC failed to respond to Mr MacKenzie's request for information of 9 December 2008, within the 20 working days allowed under section 10(1) of FOISA. He notes, however, that a response was sent to him on 26 February 2009.
16. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant in this case.
17. While the Commissioner is satisfied that the SLCC did respond to Mr MacKenzie's requirement for a review within 20 working days, he is not satisfied that the requirements of section 21(10) of FOISA were complied with in that response.
18. Section 21(10) of FOISA requires that a response to a requirement for review must contain particulars about the applicant's rights to apply to the Commissioner under section 47(1) of FOISA and thereafter to appeal to the Court of Session on a point of law under section 56. The SLCC's letter to Mr MacKenzie did not contain details of these rights, although the Commissioner notes that he had in fact been advised of his rights under section 47(1) in the SLCC's letter of 26 February in relation to the same information request.
19. The Commissioner notes Mr MacKenzie's concern that he was not given an apology by the SLCC in relation to the delay in responding to his request. An apology may have been good practice in the circumstances, although the Commissioner cannot identify any breach of Part 1 of FOISA in failing to provide one. He notes, in any event, that an apology was provided in the SLCC's response to the investigating officer.
20. The Commissioner notes the submission from the SLCC relating to the pressures that may have been created for it at a particular time by this and other information requests, and acknowledges that the volume of such requests to be expected at any given time may be difficult to predict. This difficulty cannot, however, be unique to the demands of FOISA, and the Commissioner would observe that Part 1 of FOISA imposes statutory requirements that all Scottish public authorities (even in the earliest stages of being subject to the legislation) must make adequate arrangements to discharge.
21. In this regard the Commissioner notes the SLCC's assurance that it has now developed and introduced a more structured approach to information management and dealt with relevant staffing issues, and acknowledges that this should help it deal more effectively and efficiently with FOISA requests in future.



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 MacKenzie, in particular by failing to respond to Mr MacKenzie's request for information within the timescale laid down by section 10(1) of FOISA and by failing to comply fully with section 21(10) of FOISA in its response to Mr MacKenzie's request for review..

As the SLCC has responded to Mr MacKenzie's request for information and provided details of his right of application to the Commissioner in that response, the Commissioner does not require it to take any action in relation to this breach.

Appeal

Should either Mr MacKenzie or the Scottish Legal Complaints Commission 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
16 April 2009



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.

...

- (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.

...

- (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.