

Decision Notice



Decision 053/2012 Mr Alexander Johnstone and West Dunbartonshire Council

Failure to comply with required timescales or carry out review

Reference No: 201200218
Decision Date: 27 March 2012

www.itspublicknowledge.info

Margaret Keyse

Acting Scottish Information Commissioner

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



Summary

This decision considers whether West Dunbartonshire Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information requests made by Mr Johnstone.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 9 and 16 November 2011, Mr Johnstone wrote to the Council requesting certain specified information.
2. Mr Johnstone received no response to his requests for information.
3. On 16 December 2011, Mr Johnstone wrote to the Council requesting a review in respect of its failure to respond to either request.
4. Mr Johnstone did not receive a response to his requirements for review and on 31 January 2012 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.
5. The application was validated by establishing that Mr Johnstone had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

6. On 9 February 2012, the Council was notified in writing that an application had been received from Mr Johnstone and was invited to comment on the application.



7. The Council responded on 28 February 2012, and subsequently, and its submissions are considered in the Commissioner's analysis and findings below.
8. During the investigation the Council agreed to conduct a review in respect of Mr Johnstone's requests. The Council conducted a review and responded to Mr Johnstone on 28 February 2012. However, this review related to requests made by Mr Johnstone on 12 October 2011. While this request concerned the same general subject matter as the requests of 9 and 16 November 2011, the request of 12 October 2011 was a distinct request for information. In its review outcome, the Council also asked Mr Johnstone to provide further details of his requirement for review in respect of the 9 and 16 November requests.
9. Mr Johnstone acknowledged receipt of this review outcome from the Council, but indicated to the Commissioner that he would still like a review in respect of his requests of 9 and 16 November 2011.

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 to comply with a request for information, subject to certain exceptions which are not relevant in this case.
11. Since the Council did not provide a response to Mr Johnstone's requests for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
13. During the investigation, the Council questioned whether Mr Johnstone's email of 16 December 2012 was a requirement for review in terms of FOISA, rather than simply a reminder. The Council did, however, agree to conduct a review in respect of the 9 and 16 November requests.
14. The Commissioner is satisfied that Mr Johnstone made a valid requirement for review to the Council. Mr Johnstone wrote to the Council on 16 December 2011, providing his name and an address for correspondence, and referring to his information requests of 9 and 16 November 2012. He referred to these requests as "FOI requests", indicating that he considered the response times to have elapsed and asked that the requests be dealt with. In other words, he identified the matters which gave rise to his dissatisfaction with the Council's handling of his requests.

Decision 053/2012
Mr Alexander Johnstone
and West Dunbartonshire Council



15. The requirements for the content of a valid requirement for review are set out in section 20(3) of FOISA, which is reproduced in the Appendix below. In the circumstances, although Mr Johnstone's email of 16 December 2011 did not use the word "review", the Commissioner is satisfied that it met all of these requirements. The Commissioner also notes that in acknowledging this email, the Council referred to a review being carried out for one of Mr Johnstone's requests and to its intention to carry out another review in respect of his "second" request.
16. Since the Council did not provide a response to Mr Johnstone's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
17. Although the Council indicated that it would conduct reviews in respect of the 9 and 16 November 2011 requests, as at the date of this decision no evidence had been provided to the Commissioner that a review had been carried out by the Council in respect of either request. In the absence of a review in either case, the Commissioner finds that the Council failed to discharge the remaining requirements of section 21 of FOISA: she now requires a review to be carried out in accordance with them.

DECISION

The Commissioner finds that West Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Johnstone, in particular by failing to respond to Mr Johnstone's requests for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA, and by failing to conduct a review otherwise meeting the requirements of section 21 of FOISA.

The Commissioner therefore requires the Council to comply with Mr Johnstone's requirement for review, in accordance with the requirements of section 21 of FOISA, by 11 May 2012.

Decision 053/2012
Mr Alexander Johnstone
and West Dunbartonshire Council



Appeal

Should either Mr Johnstone or West Dunbartonshire 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
27 March 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...

- (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).

...

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.
- (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.

...