

Decision Notice



Decision 076/2009 Mr Alan Crosbie and the Scottish Public Services
Ombudsman

Failure to respond to request and request for review

Reference No: 200900523
Decision Date: 08 July 2009

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether the Scottish Public Services Ombudsman (SPSO) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request and request for review made by Mr Alan Crosbie.

Background

1. On 5 December 2008, Mr Crosbie emailed the SPSO requesting copies of all correspondence, emails (internal and external), file notes and other information in respect of the action taken to follow up the recommendations of the SPSO's Investigation Report for Case 200400314: East Dunbartonshire Council.
2. No response to the request of 5 December 2008 was provided by the SPSO.
3. On 20 January 2009, Mr Crosbie emailed the SPSO requesting a review of its failure to respond.
4. No response was provided by the SPSO to this requirement for review.
5. After sending a further email to the SPSO on 3 March 2009 requesting a response, Mr Crosbie contacted the Commissioner on 13 March 2009, stating that he was dissatisfied with that failure and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Crosbie 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 20 March 2009, the Ministers were notified in writing that an application had been received from Mr Crosbie and invited to comment on the application, as required by section 49(3)(a) of FOISA.



8. The SPSO replied on 6 April 2009, explaining that each of Mr Crosbie's emails had been sent to an old email address - enquiries@spsso.org.uk - which had been replaced some time ago by ask@spsso.org.uk. The SPSO explained that, to ensure continuity of service when this address change took place, emails sent to the old address had been automatically forwarded to the new address. However, this forwarding facility had not been continued when the SPSO's IT service provider changed in August 2008. As a result, Mr Crosbie's emails had not been forwarded to the new email address where they would have been viewed by SPSO staff.
9. The SPSO advised that it was not possible to determine whether (i) the SPSO had asked for this forwarding arrangement to be put in place and the new IT provider had failed to do so, or (ii) if the SPSO had not requested this facility from the new provider. However, it explained that the forwarding facility had been put back in place and other missed emails had been retrieved and responded to.
10. The SPSO provided Mr Crosbie with an explanation for the non-response to his request and request for review, and apologised for this omission on 8 April 2009.
11. The SPSO provided a substantive response to Mr Crosbie's original information request on 10 June 2009.

Commissioner's analysis and findings

12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from 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.
13. The SPSO has acknowledged that Mr Crosbie's request of 5 December 2008 was not retrieved from the discontinued email address and that it did not provide any substantive response to this request.
14. The Commissioner therefore finds that the SPSO failed to respond to Mr Crosbie's request for information of 5 December 2008, within the 20 working days allowed under section 10(1) of FOISA.
15. Section 21(1) of FOISA gives public authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
16. The SPSO has acknowledged that no response was made to Mr Crosbie's requirement for review (and his subsequent request of 3 March 2009), for the same reasons as in the case of the initial request for information.
17. The Commissioner therefore finds that the SPSO failed to respond to Mr Crosbie's requirement for review, within the 20 working days allowed under section 21(1) of FOISA.



18. The Commissioner notes that a substantive response was provided to Mr Crosbie on 10 June 2009, and that it has taken steps to avoid similar problems occurring where people email its old address in future. In the circumstances, he does not require any further action to be taken in relation to these particular breaches in response to this decision.

DECISION

The Commissioner finds that the Scottish Public Services Ombudsman (SPSO) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Crosbie, in particular by failing to respond to Mr Crosbie's request for information and requirement 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 Crosbie, the Commissioner does not require the SPSO to take any action in relation to these breaches in response to this decision.

Appeal

Should either Mr Crosbie or the Scottish Public Services Ombudsman 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
08 July 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.

(....)

(3) If the authority –

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

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.