

Decision Notice

Decision 088/2016: Mr Sandy Smith and Aberdeenshire Council

Risk assessment: failure to respond within statutory timescale

Reference No: 201600484

Decision Date: 20 April 2016



Scottish Information
Commissioner

Summary

On 6 January 2016, Mr Smith asked Aberdeenshire Council (the Council) for a risk assessment carried out by the Council, prior to a store container and a site office being placed within Portlethen Primary School's grounds by a contractor. This decision finds that the Council failed to comply with Mr Smith's requirement for review within the timescales set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
6 January 2016	Mr Smith made an information request to the Council.
8 February 2016	The Council responded to the information request.
9 February 2016	Mr Smith wrote to the Council requiring a review of its decision.
	Mr Smith did not receive a response to his requirement for review.
13 March 2016	Mr Smith wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5 April 2016	The Council was notified in writing that an application had been received from Mr Smith and was invited to comment on the application.
15 April 2016	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council accepted that it had received Mr Smith's requirement for review, explaining that it had not been passed to the Clerk to the Review Panel as required by the Council's FOI procedures, or dealt with otherwise as a requirement for review.
2. The Council confirm that it had reminded staff in the relevant service of the correct procedure to be followed when handling information requests and requirements for review. It would also take further steps to remind staff across the Council of the procedures. The Commissioner welcomes the steps taken (and being taken) by the Council to improve practice.
3. 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. This is subject to qualifications which are not relevant in this case

4. It is a matter of fact that the Council did not provide a response to Mr Smith's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
6. The Commissioner notes that the Council has since been in contact with Mr Smith to apologise for its failure to comply and to confirm that his request is being progressed.

Decision

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Smith. In particular, the Council failed to respond to Mr Smith's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide Mr Smith with a response to his requirement for review, by **Monday 6 June 2016**.

Appeal

Should either Mr Smith or Aberdeenshire Council wish to appeal against this decision, they have the right to 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.

Enforcement

If Aberdeenshire Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

20 April 2016

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info