

Decision Notice



Decision 115/2009 Mr R and the Scottish Ambulance Service Board

Failure to respond to request and request for review

Reference No: 200901287

Decision Date: 09 October 2009

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether the Scottish Ambulance Service Board (the SASB) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr R.

Background

1. On 18 April 2009 Mr R wrote to the SASB requesting the following information relating to a particular letter:
 - a. ... "please supply details as to the source and contents of comments made in the letter from [a named individual at the SASB] dated 27 September 2007 to John Thurso [MP] about me."
 - b. "The information I wish is in regard with paragraphs Two and Three – *these issues do not pertain to the Ambulance service but also include council vehicles, police service, coastguard etc.* Where did your writer get this information as it is untrue?"
 - c. "Paragraph 3 – *At the time Mr R will also make various allegations and complaints about staff.* To what does your writer refer to here and can he back this claim?"
2. On 1 May 2009 the SASB responded that it could not supply the source of comments made in the letter dated 27 September 2007 as the named individual had left the authority. Unfortunately, this letter was not sent to the correct address.
3. On 10 June 2009 Mr R again wrote to the SASB, requesting a review of its decision not to respond to his request.
4. Mr R did not receive a response to his request for review and on 14 July 2009 wrote to the Commissioner's Office, stating that he was dissatisfied with the failure to respond 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 R 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

6. On 27 August 2009, the SASB was notified in writing that an application had been received from Mr R and invited to comment on the application as required by section 49(3)(a) of FOISA. It was also provided with a copy of Mr R's application.
7. The SASB was asked to comment on the alleged procedural breach and not on whether the information requested should have been disclosed.
8. On 4 September 2009, the SASB wrote to Mr R informing him it had been contacted by the Commissioner in relation to his request for review dated 10 June 2009. The SASB noted that it had failed to undertake a review and apologised, advising it had not received Mr R's request for review in the relevant department. It further explained that it could not tell what had happened to the request for review after receipt. The SASB also advised that it had carried a review following contact from the Commissioner and provided a copy of its original response (dated 1 May 2009) which it understood Mr R had not received. Also on 4 September, a copy of this correspondence was sent to the Commissioner.
9. In a telephone conversation between the investigating officer and Mr R on 7 September 2009, Mr R confirmed he had received correspondence from the SASB, including its review decision. Mr R identified some potential ambiguities in the SASB's correspondence. The investigating officer subsequently contacted the SASB to clarify aspects of its handling of Mr R's correspondence.

Commissioner's analysis and findings

10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the day following receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
11. The SASB responded to Mr R's request for information by replying on 1 May 2009. However, as an incorrect address was used the reply was not received by Mr R. Mr R had provided the correct address in his request. The SASB apologised for not using the correct address.
12. The Commissioner finds that the SASB failed to comply with Mr R's request for information of 18 April 2009 within the 20 working days allowed by section 10(1) of FOISA, given that the response it provided could not reasonably have been expected to reach him.
13. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant in this case.



14. In this case, the SASB acknowledged that it did not carry out a review until it received an information notice from the Commissioner following Mr R's application. It did not, therefore, respond within the 20 working days allowed by section 21(1) of FOISA. It has apologised to Mr R for this failure.

DECISION

The Commissioner finds that the Scottish Ambulance Service Board (the SASB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr R's request for information. In particular, it failed to comply with either Mr R's request or his request for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

In the circumstances, noting the SASB's subsequent response to Mr R's request for review, the Commissioner does not require the SASB to take any action in respect of the breaches identified in this decision in response to Mr R's application.

Appeal

Should either Mr R or the SASB 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
09 October 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
- (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.

...