

Decision Notice

Decision 116/2015: Mr Stephen Harte and Aberdeen City Council

Inspection of leased property: failure to respond within statutory timescales

Reference No: 201500969

Decision Date: 24 July 2015



Scottish Information
Commissioner

Summary

On 19 March 2015, Mr Harte asked Aberdeen City Council (the Council) for information about inspection of leased property and dealing with landlords. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Mr Harte's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
19 March 2015	Mr Harte made an information request to the Council.
	The Council did not respond to the information request.
23 April 2015	Mr Harte wrote to the Council, requiring a review in respect of its failure to respond.
	Mr Harte did not receive a response to his requirement for review.
25 May 2015	Mr Harte 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.
30 June 2015	The Council was notified in writing that an application had been received from Mr Harte and was invited to comment on the application.
14 July 2015	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Mr Harte's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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. Again, 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 Harte'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 intends to apologise to Mr Harte for its failure to comply. She would encourage it to do so.
7. The Commissioner also notes the Council's acknowledgement that it should have identified Mr Harte's request, which formed part of ongoing correspondence relating to a particular property, as a request for information under section 1(1) of FOISA and handled it accordingly. As indicated above, it was required to do so as a matter of law. On the other hand, requesters may find it beneficial to separate information requests from other correspondence with a public authority, even if the subject matter is related, to increase the likelihood that the request will be identified and responded to as required.

Decision

The Commissioner finds that Aberdeen City Council (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 Harte. In particular, the Council failed to respond to Mr Harte's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide Mr Harte with a response to his requirement for review, in accordance with section 21 of FOISA, by **7 September 2015**.

Appeal

Should either Mr Harte or the 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 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

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