

Decision Notice

Decision 130/2014 Mr Christopher Quinn and the Assessor for Lanarkshire Valuation Joint Board

Assessor's role and salary: failure to respond within statutory timescales

Reference No: 201401078

Decision Date: 16 June 2014



Scottish Information
Commissioner

Summary

On 25 January 2014, Mr Quinn asked the Assessor for Lanarkshire Valuation Joint Board (the Assessor) for information about the Assessor's role and who paid Assessors' salaries. This decision finds that the Assessor 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 Assessor failed to comply with Mr Quinn's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
25 January 2014	Mr Quinn made an information request to the Assessor.
	The Assessor did not respond to the information request.
16 April 2014	Mr Quinn wrote to the Assessor, requiring a review in respect of his failure to respond.
	Mr Quinn did not receive a response to his requirement for review.
20 May 2014	Mr Quinn 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.
28 May 2014	The Assessor was notified in writing that an application had been received from Mr Quinn and was invited to comment on the application.
9 June 2014	The Commissioner received submissions from the Assessor. The investigating officer then sought clarification from the Assessor, which was provided. The submissions are considered below.

Commissioner's analysis and findings

Section 10(1) of FOISA

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 Assessor did not provide a response to this request from Mr Quinn within 20 working days. The Assessor submitted that he was not required to do so, because he believed section 16(5) of FOISA applied.

3. Section 16(5) relates to requests to which a Scottish public authority claims section 14 of FOISA applies. In other words, the authority must consider the request to be vexatious or repeated. In such cases, the authority is not obliged to give the applicant notice to the effect that section 14 applies, provided:
 - (a) it has given the applicant notice to that effect, in relation to a previous identical or substantially similar request; and
 - (b) it would, in all the circumstances, be unreasonable to expect it to serve a further such notice in relation to the current request.
4. In this decision, the Commissioner need not decide whether the request under consideration is vexatious. She is concerned only with the question of whether the Assessor complied with the technical requirements of FOISA in dealing with it. The question is whether, in this case, the Assessor was entitled not to give Mr Quinn notice that it considered section 14 to apply.
5. The two tests which the Commissioner must consider here are:
 - (a) Has the Assessor given notice to Mr Quinn that section 14 of FOISA has been judged to apply to a previous identical or substantially similar request?
 - (b) If yes, would it be unreasonable in all the circumstances to expect the Assessor to serve a further notice in relation to the request under consideration in this case?
6. The Assessor provided copies of the two previous requests from Mr Quinn, submitted to the Assessor by emails on 29 July and 5 August 2013. He also provided a copy of a letter of 7 August 2013, responding to both requests. This letter responded to the requests on the basis that they were both vexatious (section 14(1) of FOISA) and repeated (section 14(2)).
7. The Assessor believed the request under consideration in this case to be substantially similar to those submitted by Mr Quinn on 29 July and 5 August 2013. The Commissioner cannot agree. While the general subject matter is the same, insofar as all of the requests relate to the functions of the Assessor, the previous requests relate to regulation/oversight of the Lanarkshire Valuation Joint Board. The present requests, as noted above, relate to the Assessor's functions in relation to Council Tax banding and the payment of Assessors' salaries.
8. On a reasonable interpretation, all of the requests may be said to be similar in some respects. The Commissioner does not believe it would be reasonable to say that they are substantially so. The effect of finding them substantially similar would be to place a substantial proportion of the Assessor's functions within the ambit of section 16(5), which the Commissioner does not believe to be the intention underlying that provision. This point has been addressed previously in *Decision 107/2011 Allan Milligan and Glasgow City Council* (see, in particular, paragraph 26 of that decision)¹.
9. Having reached this conclusion, the Commissioner does not consider it necessary to determine whether it would be unreasonable to expect the Assessor to serve a further notice on Mr Quinn in relation to the current request.
10. The Commissioner therefore concludes that section 16(5) of FOISA did not remove the obligation on the Assessor to issue a response to Mr Quinn's request for information.

¹ http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2011/201100487_201100488.aspx

11. Since the Assessor failed to issue any response to Mr Quinn in relation to the current request, the Commissioner finds that he failed to comply with section 10(1) of FOISA in dealing with the request.

Section 21 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. Again, this is subject to qualifications which are not relevant in this case.
13. It is a matter of fact that the Assessor did not provide a response to Mr Quinn's requirement for review within 20 working days. As explained in *Decision 107/2011*, section 21 contains no equivalent to section 16(5), with the result that the authority is obliged to respond to a requirement for review, even where it has previously concluded that it was not obliged to respond to the related request by virtue of section 16(5). The Commissioner must therefore find that the Assessor failed to comply with section 21(1) of FOISA in this case.
14. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in responding to a requirement for review. The Commissioner now requires the Assessor to respond in accordance with these requirements by 31 July 2014. If he considers section 14 of FOISA applicable in this case, he may deal with the requirement in accordance with section 21(8) and (9).

Decision

The Commissioner finds that the Assessor for Lanarkshire Valuation Joint Board (the Assessor) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Quinn. She finds that the Assessor failed to respond to Mr Quinn's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner now requires the Assessor to respond to Mr Quinn's requirement for review, in accordance with section 21 of FOISA, by 31 July 2014.

Appeal

Should either Mr Quinn or the Assessor for Lanarkshire Valuation Joint Board 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 Assessor for Lanarkshire Valuation Joint Board fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Assessor has failed to comply. The Court has the right to inquire into the matter and may deal with the Assessor as if he had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement
16 June 2014

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info