

Decision Notice

Decision 132/2018: Mr D and Dundee City Council

Demolition and disposal of property: failure to respond within statutory timescales

Reference No: 201800886

Decision Date: 23 August 2018



Scottish Information
Commissioner

Summary

Mr D asked for information about the demolition and subsequent disposal of the former Kingspark School. This decision finds that Dundee City Council (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 D'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
16 March 2018	Mr D made an information request to the Council.
	The Council did not respond to the information request.
20 April 2018	Mr D wrote to the Council, requiring a review in respect of its failure to respond.
	Mr D did not receive a response to his requirement for review.
26 May 2018	Mr D wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13 July 2018	The Council was notified in writing that an application had been received from Mr D and was invited to comment on the application.
27 July 2018	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 D'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 D's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. In its submission to the Commissioner, the Council stated its view that the request, whilst it might be a request for information, was part of a long discourse between the Council and Mr D and that the Council's position had been stated in an e-mail to Mr D, dated 16 March 2018.
6. The Council informed the Commissioner that Mr D was in correspondence with many Council officers but not every communication from him was considered to be an information request. This communication had not been, although the Council acknowledged that it could be interpreted as such.
7. 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: he now requires a review to be carried out in accordance with section 21.
8. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr D for its failure to comply.

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 D. In particular, the Council failed to respond to Mr D'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 a review outcome, **by Monday 8 October 2018**.

Appeal

Should either Mr D 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

23 August 2018

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