

Decision Notice



Decision 137/2011 Mr Mark Watson and Aberdeen City Council

Failure to respond to request and requirement for review

Reference No: 201101043

Decision Date: 8 July 2011

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether Aberdeen City Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Mark Watson.

Background

1. On 19 January 2011, Mr Watson wrote to Aberdeen City Council (the Council) requesting the following information:
 - a. Full details of all financial grants made by Scottish Enterprise (SE) in relation to Peacock Visual Arts (PVA), including the date of the grant, the amount of the grant, any conditions of the grant, who authorised the grant and details of all communications with the Council in relation to any such grant (whether with SE, PVA or any other third party)
 - b. Details of any decision to withdraw the grant, including dates of any such decision, who authorised/made the decision, when the decision was communicated to the Council and PVA, the details of any such communication from SE to the Council and/or PVA and any response from the Council and/or PVA.
 - c. Whether any amount of the grant was spent or otherwise dissipated and full details of any such expenditure.
2. The Council acknowledged receipt of this request and advised Mr Watson that the scheduled date for its response to his request was 17 February 2011.
3. On 3 March 2011, Mr Watson wrote to the Council, requesting a review of its decision. Mr Watson drew the Council's attention to the fact that it had not provided him with a response to his initial request and in doing so had breached the timescales provided for in FOISA.
4. The Council acknowledged receipt of this request for review on 11 March 2011.
5. The Council notified Mr Watson of the outcome of its review on 28 March 2011. The Council apologised for the delay in providing Mr Watson with a response to his initial request, indicating that this was because the information requested appeared to belong to SE, rather than the Council. The Review panel also noted that it would ask its FOI Compliance Team to consider whether this was a competent request for the Council to respond to.



6. On 20 April 2011, the Council wrote to Mr Watson with a progress update. The Council advised him that it had identified the information he had requested and that it was currently being prepared for disclosure. However, it noted that due to the amount of information that needs to be prepared and checked, it may be another few days before it is ready to be sent to him.
7. Mr Watson did not receive the information he had requested, nor did he receive a substantive response to his request for review and on 7 June 2011, he wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Watson 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

9. On 13 June 2011, the Council was notified in writing that an application had been received from Mr Watson and was invited to comment on the application.
10. This letter noted that the Council had failed to provide a response to Mr Watson's information request and that, although the Council's letter of 28 March had indicated that a review had been conducted, this process did not appear to have produced any of the possible outcomes specified in section 21(4) of FOISA.
11. The letter pointed out that section 21(4) of FOISA sets out the options for an authority conducting a review, and that, where no decision has been made (as in Mr Watson's case), the only one available would be to provide the decision that should have been provided within the initial 20 working day period.
12. The Council responded to this letter on 28 June 2011. In this letter, the Council acknowledged that it failed to handle Mr Watson's information request in line with the timescale outlined in section 10(1) of FOISA, and apologised for this failure. The Council submitted that this was due to three factors;
 - a. The Council's internal freedom of information procedures at the time the request was received. The Council noted that it was currently overhauling and improving these procedures, including the conduct of internal reviews.
 - b. The information request submitted by Mr Watson relates to a matter which is current and ongoing.
 - c. The nature and content of the information requested, which needed to be collated and compiled across three Council Directorates.



13. The Council submitted that the above three factors were also why the internal review it carried out on 25 March 2011 was not valid for the purpose of section 21(4) of FOISA. The Council advised that it was currently preparing a response to be issued to Mr Watson and that it expected to do so by 1 July 2011.
14. However, in later correspondence, the Council advised that it had failed to issue a response to Mr Watson on 1 July 2011, but that it aimed to do as soon as possible, whilst acknowledging that a further delay may ensue.

Commissioner's analysis and findings

15. 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, subject to certain exceptions which are not relevant in this case.
16. The Council acknowledged that, having received Mr Watson's request for information on 19 January 2011, it did not provide any response. The Commissioner therefore finds that the Council failed to respond to Mr Watson's request for information of 19 January 2011, within the 20 working days allowed by section 10(1) of FOISA.
17. 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.
18. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached.
19. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA.
20. The Commissioner has considered the content of the letter sent to Mr Watson by the Council on 28 March 2011, and has noted that the Council's review did not do any of the things listed in section 21(4) of FOISA. Instead, it simply acknowledged and apologised for the delay in responding to the request and advised that it would consider whether his request was a competent request for it to respond to. The Commissioner is unable to accept that this response met the requirements of section 21(4) of FOISA.



21. The Commissioner finds that the Council failed to carry out a review in line with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA
22. The Commissioner notes that the Council has acknowledged that its review outcome was not valid and did not meet the requirements of section 21(4) of FOISA. The Commissioner also notes that the Council has indicated that this failure, and its failure to meet the timescales set out in section 10(1) of FOISA, was due to inadequate internal procedures for handling information requests. The Council has advised the Commissioner that it is currently working to improve these procedures to prevent such failings from occurring in the future.
23. The Commissioner acknowledges that the Council has admitted these failings and has identified areas for improvement, but he also notes that it failed to meet its own deadline of 1 July 2011, in relation to issuing Mr Watson with the outcome of its review. Given that the Council has not yet provided the outcome of its review to Mr Watson, he now requires it to do so.

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 dealing with the information request made by Mr Watson, in particular by failing to respond to Mr Watson's request for information within the timescales laid down by sections 10(1) and by failing to carry out a review in line with sections 21(4) and (5) of FOISA.

In order to comply with Part 1 of FOISA, the Commissioner requires the Council to conduct a review of its handling of Mr Watson's request, in line with section 21(4), and notify him of the outcome of this review in line with section 21(4) by 19 August 2011.

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and Aberdeen City Council



Appeal

Should either Mr Watson or the Council 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.

Margaret Keyse
Head of Enforcement
8 July 2011



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

...

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

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