

Decision Notice



Decision 148/2008 Mr Graham Adams and West Lothian Council

Failure to respond to information request and request for review

Reference No: 200801631

Decision Date: 1 December 2008

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision consider whether West Lothian 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 Graham Adams (Mr Adams).

Background

1. On 9 February 2008, Mr Adams wrote to the Council in relation to its response to an earlier information request. In addition to his comments on the Council's response, Mr Adams' email contained several requests for information.
2. The Council did not respond to Mr Adams' email.
3. Mr Adams sent another email on 4 April 2008, in which he set out his information request more clearly.
4. After receiving no reply to his request, on 13 May 2008 Mr Adams wrote to the Council requesting a review of its failure to respond.
5. Mr Adams did not receive a response to his request for review and on 24 June 2008 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.
6. Mr Adams' application was validated and the Council was asked to comment on the application. On 12 August 2008 the Council acknowledged that it had failed to respond to Mr Adams' requests and stated that a further review of his case would be arranged. On this understanding Mr Adams withdrew his application for a decision from the Commissioner.
7. After receiving no further response from the Council, on 12 November 2008 Mr Adams made a fresh application for a decision from the Commissioner in terms of section 47(1) of FOISA, stating his reasons for dissatisfaction.
8. The application was validated by establishing that Mr Adams 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 November 2008, the Council was notified in writing that an application had been received from Mr Adams and was invited to comment on the application.
10. The Council replied on 26 November 2008. The Council referred to the response provided to the Commissioner on 12 August 2008, which had confirmed receipt of Mr Adams' emails. The Council also confirmed that, as communicated in a phone call to the Commissioner's office on 29 August 2008, the relevant Council officials had met to review Mr Adams' case. The Council advised that it now had most of the information required to answer the specific points raised by Mr Adams, and that it intended to reply to him by 12 December 2008.
11. In its previous submission to the Commissioner (12 August 2008) the Council advised that it had interpreted Mr Adams' email of 9 February 2008 as substantially expressing his opinion on the issues dealt with in the Council's review of his previous information request, and his dissatisfaction with the Council's position. The Council was aware that Mr Adams had been advised by the Commissioner's office that he was entitled to apply to the Commissioner for a decision regarding the Council's response to his previous request. The Council therefore assumed that Mr Adams would follow this course of action and awaited such development.
12. The Council did not explain why Mr Adams' subsequent emails, of 4 April and 13 May 2008, had elicited no response.

Commissioner's analysis and findings

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant to this case.
14. The Commissioner finds that the Council failed to respond to either of Mr Adams' requests for information within the 20 working days allowed by section 10(1) of FOISA.
15. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant here.
16. The Commissioner also finds that the Council failed to respond to Mr Adams' requirement for review within the 20 working days allowed under section 21(1) of FOISA.
17. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.



18. The Commissioner notes that the Council has indicated that it intends to respond to Mr Adams by 12 December 2008, and hopes that it will do so. Given the previous excessive delays in responding to Mr Adams request, the Commissioner finds it appropriate to issue a decision notice which requires the Council to respond to Mr Adams' request.

DECISION

The Commissioner finds that West Lothian 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 Adams, in particular by failing to respond to his requests for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires West Lothian Council to respond to Mr Adams' requests by 16 January 2009.

Appeal

Should either Mr Adams 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.

Claire Sigsworth
Deputy Head of Investigations
1 December 2008



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.

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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.

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