

Decision Notice



Decision 153/2008 Loveday's and Scottish Borders Council

Failure to respond to a request for information within the required timescales
and failure to respond to a request for review

Reference No: 200801669

Decision Date: 08 December 2008

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether Scottish Borders 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 Loveday's. Following an investigation, the Commissioner found that the Council had failed to comply with the timescales specified in sections 10(1) and 21(1) of FOISA.

Background

1. On 4 September 2008, Loveday's wrote to the Council requesting details of investigations the Council had carried out in ascertaining whether or not a particular flat was occupied.
2. Loveday's did not receive a reply to its request. On 17 October 2008, Loveday's wrote to the Council requesting a review of the way it had dealt with its information request and drawing the Council's attention to the fact that it had not responded to its initial request.
3. Loveday's did not receive a response to its request for review and on 17 November 2008 wrote to the Commissioner, stating that it was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Loveday's 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 failure to respond to that request. The case was then allocated to an investigating officer.

Investigation

5. On 21 November 2008, the Council was notified in writing that an application had been received from Loveday's and was invited to comment on the application, all in terms of section 49(3)(a) of FOISA.



6. The Council responded on 27 November 2008, acknowledging that it had failed to respond to Loveday's initial request and request for review. The Council explained that both had been received by the Council but that, inadvertently, they had not been logged as Freedom of Information requests and not been processed in line with FOISA. The Council explained that it had now taken steps to ensure that procedures are in place for any such further requests to be treated in the proper way and clearly identified as Freedom of Information requests.
7. The Council provided a copy of a letter to Loveday's dated 3 December 2008, in which it apologised for failing to respond previously, and provided a response to Loveday's information request.

Commissioner's analysis and findings

8. 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.
9. The Commissioner finds that the Council failed to respond to Loveday's request for information within the 20 working days allowed by section 10(1) of FOISA.
10. 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.
11. The Commissioner also finds that the Council failed to respond to Loveday's requirement for review within the 20 working days allowed under section 21(1) of FOISA.
12. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.
13. The Commissioner notes that the Council has now written to Loveday's in response to its request and has apologised to Loveday's.



DECISION

The Commissioner finds that Scottish Borders 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 Loveday's, in particular by failing to respond to Loveday's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Council has now responded to the initial request, the Commissioner does not require the Council to take any further action in response to this particular application in relation to these failures.

Appeal

Should either Loveday's 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 Investigations
8 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

...

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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