

Decision Notice



Decision 164/2011 Martin Wilson and Aberdeen City Council

Failure to respond to request and requirement for review

Reference No: 201101322

Decision Date: 15 August 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 Wilson.

Background

1. On 2 March 2011, Mr Wilson emailed the Council requesting details of the license fees set by the Council in the years 2007 to 2011 in respect of taxis and private hire cars, window cleaners, street traders, riding establishments, boat hire and food business.
2. The Council did not respond to this request and, on 18 May 2011, Mr Wilson emailed the Council, requesting a review of its handling of his request. Mr Wilson 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.
3. The Council wrote to Mr Wilson on 10 June 2011, indicating that it had conducting a review. The Council's Review Panel acknowledged and apologised for the Council's failure to respond to Mr Wilson's request. However, it did not provide any response to that request, and gave no indication of when (or whether) a response would be provided.
4. The Review Panel also indicated that it had requested that internal processes for responding to information requests be reviewed within each Service to ensure that the Council was able to meet the statutory requirements of FOISA in relation to the prescribed timescales for responding to requestors.
5. Mr Wilson did not receive any further replay to his information request and on 18 July 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.
6. The application was validated by establishing that Mr Wilson 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

7. On 26 July 2011, the investigating officer notified the Council in writing that an application had been received from Mr Wilson and invited the Council to comment on the application.
8. This letter noted that the Council had failed to provide a response to Mr Wilson's information request and that, although the Council's letter to Mr Wilson of 10 June 2011 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.
9. The investigating officer's 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 in relation to an information request (as in Mr Wilson's case), the only one available would be to provide the decision that should have been provided within the initial 20 working day period.
10. The Council responded to this letter on 9 August 2011. The Council acknowledged that it had failed to handle Mr Wilson's information request in line with the timescale in section 10(1) of FOISA. The Council explained that this was due to the relevant Services taking a long time to provide the information and the absence of senior staff at critical times to allow for adequate quality assurance checks to be carried out.
11. The Council also acknowledged that its response to Mr Wilson's requirement for review did not meet the requirements of section 21(4) of FOISA. The Council indicated that it was taking steps to ensure that Review Panels are clear about their remit and the need to provide outcomes that satisfy the terms of section 21 of FOISA.
12. The Council confirmed that it had provided Mr Wilson with all of the information that he had requested on 2 August 2011.

Commissioner's analysis and findings

13. 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.
14. In this case, the Council did not respond to Mr Wilson's information request of 2 March 2011 until 2 August 2011. The Commissioner therefore finds that the Council failed to respond to Mr Wilson's request 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 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.



16. 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.
17. 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.
18. The Commissioner has considered the content of the Council's response to Mr Wilson's request for review, which was sent to him on 10 June 2011. He has noted its review did not do any of the things listed in section 21(4) of FOISA. Instead, it simply apologised for the delay in responding to the request. The Commissioner is unable to accept that this response met the requirements of section 21(4) of FOISA.
19. The Commissioner therefore 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.
20. The Commissioner notes that the Council has acknowledged that it failed to meet the statutory timescale for responding to Mr Wilson's request and that its response to Mr Wilson's requirement for review did not meet the statutory requirements of section 21(4) of FOISA. The Commissioner also notes that the Council has indicated that it intends taking steps to review its internal processes for responding to information requests and to ensure that Review Panels are aware of the need to provide outcomes that satisfy the statutory requirements of section 21 of FOISA.
21. The Commissioner is aware that the Council has now provided Mr Wilson with a full response to his information request of 2 March 2011 (thereby meeting the requirement of section 21(4)(c) and (5)), and so he does not require the Council to take any specific action in response to the breaches identified in this decision.
22. Nonetheless, the Commissioner wishes to record his concern at the Council's handling of the request for information and requirement for review in this case, and other recent cases that are the subject of applications to him. The Commissioner would urge the Council to make certain that early, and adequate measures are taken to ensure its compliance with the requirements of FOISA, particularly in relation to the statutory requirements of sections 10 and 21. The breaches in this case have been noted and may be taken into account in determining whether any future action should be taken in respect of the Council under the Commissioner's Enforcement Strategy.



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 Wilson, in particular by failing to respond to Mr Wilson's request for information within the timescale laid down by section 10(1) and by failing to carry out a review in line with section 21(4) and (5) of FOISA within the timescale required by section 21(1).

For the reasons set out above in this decision, the Commissioner does not require the Council to take any action in response to this decision. However, the breaches identified above have been noted and may be taken into account in determining whether any future action should be taken in respect of the Council under the Commissioner's Enforcement Strategy.

Appeal

Should either Mr Wilson 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 Enforcement
15 August 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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