

Decision Notice



Decision 170/2012 Mr M Aberdeen City Council

Failure to comply with required timescales

Reference No: 201202034

Decision Date: 17 October 2012

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Rosemary Agnew

Scottish Information Commissioner

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



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 M.

Background

1. On 25 July 2012, Mr M wrote to the Council requesting certain specified information.
2. Mr M received no response to his request for information.
3. On 31 August 2012, Mr M wrote to the Council requesting a review in respect of its failure to respond.
4. Mr M did not receive a response to his requirement for review and, on 8 October 2012, 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.
5. The application was validated by establishing that Mr M 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

6. On 15 October 2012, the Council was notified in writing that an application had been received from Mr M and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Council responded later that day, confirming that a review had been carried out and a response had been provided to Mr M on 28 September 2012. The Council provided a copy of this response to the Commissioner, which included an apology for failing to respond to Mr M's initial request within the time allowed by FOISA, as well as evidence to show that the response had been provided on that date.



8. On 15 October 2012, Mr M also wrote to the Commissioner confirming that he had received the Council's response of 28 September 2012 after he had made his application to the Commissioner.

Commissioner's analysis and findings

9. 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.
10. Since the Council did not provide a response to Mr M's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
11. Section 21(1) of FOISA gives public 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 to this case.
12. Mr M submitted his requirement for review on 31 August 2012 and as such the Council was required to respond by 28 September 2012. Since the Council responded to Mr M on that date, the Commissioner finds that it complied with section 21(1) of FOISA
13. The Commissioner does not require the Council to take any action in this case.

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 M by failing to respond to Mr M's request for information within the time laid down by section 10(1) of FOISA. However, she finds that the Council complied with the requirements of section 21(1) of FOISA. She does not require the Council to take any action.



Appeal

Should either Mr M or Aberdeen City 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
17 October 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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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