

Decision Notice



Decision 191/2013 Ms Rona Hamilton and East Dunbartonshire Council

Failure to respond to request and requirement for review

Reference No: 201301788

Decision Date: 29 August 2013

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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 East Dunbartonshire 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 Ms Rona Hamilton (Ms Hamilton).

Background

1. On 3 May 2013, Ms Hamilton wrote to the Council requesting certain specified information.
2. Ms Hamilton received no response to her request for information.
3. On 25 June 2013, Ms Hamilton wrote to the Council requesting a review of its failure to respond.
4. Ms Hamilton did not receive a response to her requirement for review, apart from an acknowledgement (received on 26 June 2013) advising that a response would be issued as soon as possible.
5. On 31 July 2013, Ms Hamilton wrote to the Commissioner's Office, stating that she 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 Ms Hamilton 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 14 August 2013, the Council was notified in writing that an application had been received from Ms Hamilton and invited to comment on the application.
8. The Council responded on 28 August 2013. It acknowledged that it had not complied with the relevant timescales in FOISA. It explained that the request had been received by the Chief Executive's Office and passed to the appropriate Service to respond to. The request was then logged in line with their procedures, but a breakdown in the administration process resulted in the failure to respond to both the request, and the requirement for review.



Commissioner's analysis and findings

9. The Council explained it has received an unprecedented volume of enquiries relating to similar information, but acknowledged that its failure to respond to Ms Hamilton's request and requirement for review was not acceptable. The Service dealing with this request was informed of these failures, to ensure this does not happen again.
10. The Council has confirmed that it will now carry out a review.
11. 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.
12. Since the Council did not provide a response to Ms Hamilton's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
14. Since the Council did not provide a response to Ms Hamilton's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. The remainder of section 21 sets out the requirements to be followed by a Scottish Public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

DECISION

The Commissioner finds that East Dunbartonshire 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 Ms Hamilton, in particular by failing to respond to Ms Hamilton's request 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 the Council to comply with Ms Hamilton's requirement for review, in accordance with the requirements of section 21 of FOISA, by **13 October 2013**.



Appeal

Should either Ms Hamilton or East Dunbartonshire Council wish to appeal against this decision, they have the right to 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.

Alison Davies
Deputy Head of Enforcement
29 August 2013



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.

...