

Decision Notice

Decision 199/2014: Miss Taylor Smith and East Dunbartonshire Council

Statistics for baseline assessment in literacy: failure to respond within statutory timescales

Reference No: 201402051

Decision Date: 11 September 2013



Scottish Information
Commissioner

Summary

On 2 June 2014, Miss Smith asked East Dunbartonshire Council (the Council) for statistics for baseline assessment in literacy in 2013. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Miss Smith's requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
2 June 2014	Miss Smith made an information request to the Council.
2 June 2014	Although Miss Smith received an automated acknowledgement, she did not receive a response to the information request.
9 July 2014	Miss Smith wrote to the Council requiring a review in respect of its failure to respond.
9 July 2014	Again, although Miss Smith received an automated acknowledgement, she did not receive a response to her requirement for review.
19 August 2014	Miss Smith wrote to the Commissioner's Office, stating that she was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
25 August 2014	The Council was notified in writing that an application had been received from Miss Smith and was invited to comment on the application.
8 September 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council acknowledged that it had failed to respond to Miss Smith's information request and requirement for review. It confirmed a response would be issued to Miss Smith. This had not been done by the time of this decision.

2. The Council explained that it recognised the difficulties presented by the volume of requests it had received. As a result, additional staffing resources had been allocated to deal with information requests.
3. 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. This is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the Council did not provide a response to Miss Smith's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. 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. Again, this is subject to qualifications which are not relevant in this case.
6. It is a matter of fact that the Council did not provide a response to Miss Smith's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. 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 section 21.

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 responding to the information request made by Miss Smith. In particular, the Council failed to respond to Miss Smith's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide Miss Smith with a response to her requirement for review, by **Monday 27 October 2014**.

Appeal

Should either Miss Smith 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.

Enforcement

If East Dunbartonshire Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

11 September 2014

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