

Decision Notice

Decision 203/2017: Mr Brian Gourlay and West Dunbartonshire Council

Knowledge of emails and a complaint: failure to respond within statutory timescales

Reference No: 201702000

Decision Date: 20 December 2017



Scottish Information
Commissioner

Summary

West Dunbartonshire Council (the Council) was asked for information as to who (within the Council) was (i) aware of specified emails and (ii), in a separate request, involved in formulating the response to a complaint. This decision finds that the Council failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
2 and 29 August 2017	Mr Gourlay made information requests to the Council.
	The Council did not respond to the information requests.
7 October 2017	Mr Gourlay wrote to the Council, requiring a review of its failures to respond.
	Mr Gourlay did not receive a response to his requirement for review.
9 November 2017	Mr Gourlay wrote to the Commissioner's Office, stating that he 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.
1 December 2017	The Council was notified in writing that an application had been received from Mr Gourlay and was invited to comment on the application.
13 December 2017	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council confirmed that it had received Mr Gourlay's requests and request for review. It explained the context in which it had determined, on the basis that it considered them to be vexatious, that it was not required to respond. Following subsequent discussions with the Commissioner, it acknowledged that this had not been the appropriate course.
2. After receiving notification of Mr Gourlay's application, the Council responded to his requirement for review on 13 December 2017. The Commissioner was provided with a copy of the review outcome.
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 Mr Gourlay'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 Mr Gourlay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. As the Council responded to Mr Gourlay's requirement for review on 13 December 2017, the Commissioner does not require it to take any further action in relation to Mr Gourlay's application.

Decision

The Commissioner finds that West 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 Mr Gourlay. In particular, the Council failed to respond to Mr Gourlay's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Gourlay's application, given that a response has now been issued.

Appeal

Should either Mr Gourlay or West 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.

Euan McCulloch
Deputy Head of Enforcement

20 December 2017

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