

Decision Notice



Decision 211/2011 Millar & Bryce Limited and East Dunbartonshire Council

Failure to comply with required timescales or carry out review

Reference No: 201101828

Decision Date: 25 October 2011

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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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 various information requests made by Millar & Bryce Limited.

Background

1. On 5 July 2011, Millar & Bryce Limited wrote to the Council enclosing 30 requests for information about notices or orders made, served, discharge or released and those which remained extant in relation to the legislation detailed in the requests.
2. On 16 August 2011, having received no response, Millar & Bryce Limited wrote to the Council requesting a review of its failure to reach a decision on the requests.
3. Millar & Bryce Limited did not receive a response to its requirement for review and, on 30 September 2011, its legal representatives wrote to the Commissioner on its behalf, stating that Millar & Bryce Limited was dissatisfied with the Council's failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Millar & Bryce Limited had made requests 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 those requests. The case was then allocated to an investigating officer.

Investigation

5. On 6 October 2011, the Council was notified in writing that an application had been received from Millar & Bryce Limited and was invited to comment on the application.
6. The Council did not provide any response during the period specified by the investigating officer.



Commissioner's analysis and findings

7. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
8. Given that the Council did not respond to Millar & Bryce Limited's requests of 5 July 2011, the Commissioner finds that the Council failed to respond to Millar & Bryce Limited's requests for information within the 20 working days allowed by section 10(1) of FOISA.
9. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
10. The Commissioner finds that the Council failed to deal with Millar & Bryce Limited's requirement for review within the 20 working days required by section 21(1) of FOISA.
11. The Commissioner now requires the Council to deal with Millar & Bryce Limited's requirement for review, in accordance with the requirements of section 21 of FOISA.

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) by failing to respond to Millar & Bryce Limited's requests for information within the timescale laid down by section 10(1) of FOISA and by failing to comply with Millar & Bryce Limited's requirement for review as required by section 21 of FOISA.

The Commissioner therefore requires the Council to deal with Millar & Bryce Limited's requirement for review, in accordance with the requirements of section 21 of FOISA, by 16 December 2011.



Appeal

Should either Millar & Bryce Limited or East Dunbartonshire 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.

Euan McCulloch
Deputy Head of Enforcement
25 October 2011



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.

...

- (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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