

Decision Notice



Decision 234/2011 Mr Alistair Sloan and East Dunbartonshire Council

Failure to comply with required timescales or carry out review

Reference No: 201102017

Decision Date: 22 November 2011

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
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 an information request made by Mr Sloan.

Background

1. On 22 August 2011, Mr Sloan wrote to the Council requesting information in relation to education as follows:
 - (a) The roll for Primary 1 at each school in East Dunbartonshire for the 2011/2012 academic year
 - (b) A list of Primary Schools in East Dunbartonshire where the roll in P1 was more than 25 per class by virtue of “excepted pupils” in terms of the Education (Lower Primary Class Sizes) (Scotland) Regulations 1999.
2. On 26 September 2011, having received no response to his request, Mr Sloan wrote to the Council requesting a review of its failure to reach a decision on the request.
3. Mr Sloan did not receive a response to his requirement for review and, on 28 October 2011, wrote to the Commissioner, stating that he 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 Mr Sloan 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

5. On 1 November 2011, the Council was notified in writing that an application had been received from Mr Sloan and was invited to comment on the application, as required by section 49(3)(a) of FOISA.



6. The Council responded on 7 November 2011, acknowledging that it had failed in its duty under Part 1 of FOISA in that it had not provided Mr Sloan with a response to his request within the appropriate timeframe, or carried out a review. The Council apologised, stating that it was unable to offer a reasonable excuse for the evident failures beyond that which it stated within the response it had provided to Mr Sloan (see paragraph 7 below).
7. The Council provided Mr Sloan with a response to his requirement to review on 7 November 2011, acknowledging that his initial request had not been answered. It also explained that by the time his requirement for review had been passed to the appropriate staff member for a response, Mr Sloan had made his application to the Commissioner. The Council provided Mr Sloan with the information requested and apologised unreservedly for the delay.
8. The Commissioner notes that Council is currently undergoing a major reconfiguration of the way in which it processes requests across the authority in order to improve its service, following a practice assessment by the Commissioner's office. He will be monitoring the Council's progress in this matter.

Commissioner's analysis and findings

9. 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.
10. Given that the Council did not respond to Mr Sloan's request of 22 August 2011, the Commissioner finds that the Council failed to respond to Mr Sloan's request for information within the 20 working days allowed by section 10(1) of FOISA.
11. 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)).
12. As the Council did not provide Mr Sloan with a response to his requirement for review until 7 November 2011, the Commissioner finds that it failed to deal with Mr Sloan's requirement for review within the 20 working days required by section 21(1) of FOISA.
13. Given that the Council has now provided Mr Sloan with a response to his requirement for review, he does not require the Council to take any action in this case.



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 Mr Sloan's request for information within the timescale laid down by section 10(1) of FOISA and by failing to comply with Mr Sloan's requirement for review as required by section 21 of FOISA. He does not require the Council to take any action in respect of these failures in response to Mr Sloan's application.

Appeal

Should either Mr Sloan 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
22 November 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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