

Decision Notice



Decision 101/2013 Mr Roger Marshall and the Scottish Fire and Rescue Service

Failure to comply with timescales

Reference No: 201300931
Decision Date: 30 May 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

This decision considers whether the Scottish Fire and Rescue Service (the SFRS) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Marshall on 10 January 2013.

Background

1. The Scottish Fire and Rescue Service (the SFRS) is the statutory successor to the Lothian and Borders Fire and Rescue Board (the Board). Until 1 April 2013, the Board was, in its own right, a Scottish public authority for the purposes of FOISA.
2. This decision is concerned with the actions of the Board, which was the joint board discharging the functions of the fire authority for the local authority areas which included that covered by Mr Marshall's request.
3. On 10 January 2013, Mr Marshall wrote to the Board requesting certain specified information.
4. The Board responded on 5 February 2013 and withheld the information from Mr Marshall.
5. On 14 February 2013, Mr Marshall wrote to the Board requesting a review of its decision.
6. Mr Marshall did not receive a response to his requirement for review and, on 14 April 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Marshall 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

8. On 10 May 2013, the SFRS (as the Board's statutory successor) was notified in writing that an application had been received from Mr Marshall and was invited to comment on the application.



9. The SFRS provided a response to Mr Marshall's review requirement on 27 May 2013. In its comments to the Commissioner, it acknowledged that on this occasion the normal processes for dealing with Freedom of Information requests and reviews were not followed.
10. The SFRS stated that it had brought this to the attention of the individuals involved, to ensure that the failure did not recur. It now believed it had clear and robust information handling procedures in place to address this.

Commissioner's analysis and findings

11. 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.
12. Since the SFRS did not provide a response to Mr Marshall's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. Given that the SFRS has now responded to Mr Marshall's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Marshall's application.

DECISION

The Commissioner finds that the Scottish Fire and Rescue Service (the SFRS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Marshall, in particular by failing to respond to Mr Marshall's requirement for review within the timescale laid down by section 21(1) of FOISA. Given that the SFRS has now responded to Mr Marshall's requirement for review, the Commissioner does not require it to take any action in respect of this failure, in response to Mr Marshall's application.



Appeal

Should either Mr Marshall or the Scottish Fire and Rescue Service 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
30 May 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

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