



Decision Notice 138/2022

Processing of a previous information request – failure to respond

Applicant: The Applicant

Authority: Clackmannanshire Council

Case Ref: 202201267

Summary

The Applicant asked the Authority for information about a previous information request she had made, reference “PEO0497F51”. In particular, the Applicant sought information about the processing of the request and decision making in relation to it. This decision finds that the Authority failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 8 September 2022.
2. The Authority did not respond to the information request.
3. On 11 October 2022, the Applicant wrote to the Authority, requiring a review in respect of its failure to respond.
4. The Authority replied on 21 October 2022, noting that the case (PEO0497F51) had already been closed. It invited the Applicant to make a further information request if she wished.
5. The Applicant wrote back the same day, explaining that she had made a new information request to seek information concerning the processing of the previous one (PEO0497F51) and was not seeking a review in relation to that previous request. She referred to the email containing the previous request and sought confirmation that she would receive a response to her requirement for review.

6. The Authority sought clarification on 31 October 2022, asking for a timeframe and what the request related to.
7. The Applicant provided clarification the same day (setting out the terms of the request of 8 September 2022 again) and offered to provide further clarification if the request was still unclear. The Authority acknowledged this on 1 November 2022 and again on 7 November 2022
8. On 7 November 2022, the Applicant wrote again to the Authority, expressing her dissatisfaction with the handling of her request. She stated that she did not believe it was necessary or reasonable to seek clarification in the circumstances, when the request was clear enough. She submitted that her request of 8 September 2022 and her requirement for review dated 11 October 2022 had both been valid.
9. The Applicant still did not receive a response to her requirement for review.
10. The Applicant wrote to the Commissioner on 9 November 2022, stating that she was dissatisfied with the Authority's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

12. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 10 November 2022.
13. Having initially queried whether the application was premature (given its request for clarification of 31 October 2022, provided by the applicant on the same day) the Authority emailed the Commissioner on 22 November 2022, confirming that it did not wish to make any submissions.
14. In the Commissioner's view, the Applicant's request of 8 September 2022 was adequately clear in describing the information sought by the Applicant. It was followed by an equally clear requirement for review. In any event, to all intents and purposes, the "clarification" provided by the Applicant on 31 October 2022 simply restated the request she had already made – and the Authority appears to consider what it was given on 31 October to have been a valid request. In all the circumstances, the Commissioner is satisfied that:
 - (i) the Applicant made a valid request for information on 8 September 2022;
 - (ii) the Applicant also made a valid requirement for review on 11 October 2022;
 - (iii) the request did not, therefore, require the clarification sought by the Authority on 31 October 2022;
 - (iv) consequently, the Authority's request for clarification was not reasonable, and therefore did not meet the requirements of section 1(3) of FOISA.

As matters of good practice, the Commissioner must also ask himself why:

- a) assuming it genuinely considered clarification to be necessary in this case, and bearing in mind the guidance in section 5.4 of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004, the Authority took so long to seek that clarification, and
- b) the Authority does not appear, at any point prior to obtaining "clarification" from the Applicant on 31 October 2022, to have given adequate consideration to what the Applicant was actually asking for (indeed, it appears at points to have been oblivious to the terms of the request of 8 September 2022, although at no point has it been suggested that the request was not received).

The Commissioner will consider whether any separate action needs to be taken in relation to these practice issues.

15. 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.
16. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
17. 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.
18. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
19. 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 Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
20. The Commissioner recommends that the Authority apologises to the Applicant for its failures in this case.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant'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 Authority to respond to the requirement for review, in accordance with section 21, by **11 January 2023**.

Appeal

Should either the Applicant or the Authority 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 the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

30 November 2022