

Decision Notice

Decision 021/2016: Dawn Fraser and Caledonian Maritime Assets Ltd

Cost of MV Loch Seaforth: failure to respond within statutory timescales

Reference No: 201502310

Decision Date: 02 February 2016



Scottish Information
Commissioner

Summary

On 21 May 2015, Ms Fraser asked Caledonian Maritime Assets Ltd (CMAL) for information about the leasing agreement for the vessel MV Loch Seaforth. This decision finds that CMAL failed to respond to the request for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered CMAL to comply with the requirement for review.

Background

Date	Action
21 May 2015	Ms Fraser made an information request to CMAL (a company wholly owned by the Scottish Ministers).
2 June 2015	CMAL responded to the information request.
11 June 2015	Ms Fraser wrote to CMAL requiring a review of its decision.
	Ms Fraser did not receive a response to her requirement for review.
7 January 2016	Ms Fraser wrote to the Commissioner's Office, stating that she was dissatisfied with CMAL's failure to respond to her requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 January 2016	CMAL was notified in writing that an application had been received from Ms Fraser and was invited to comment on the application.
28 January 2016	The Commissioner received submissions from CMAL. These submissions are considered below.

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. CMAL explained that it had not received Ms Fraser's requirement for review. Following notification of this application from the Commissioner, an extensive search was made of the mailbox of where the email was sent, to check whether the email had indeed been received. CMAL confirmed that it could not find any trace of Ms Fraser's email.
3. The Commissioner is required to come to a conclusion, on the balance of probabilities, as to whether the email requesting a review was sent on 11 June 2015. In light of the information provided by the applicant, she is satisfied that the email was sent. The Commissioner has concluded that CMAL did not respond to Ms Fraser's requirement for review within 20 working days and therefore did not comply with section 21(1) of FOISA.

4. The Commissioner notes that CMAL intends to provide Ms Fraser with a response to her requirement for review.
5. 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 CMAL failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 of FOISA.

Decision

The Commissioner finds that Caledonian Maritime Assets Ltd (CMAL) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Fraser. In particular, CMAL failed to respond to Ms Fraser's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires CMAL to provide a response to Ms Fraser's requirement for review, by **Friday 18 March 2016**.

Appeal

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

Alison Davies
Deputy Head of Enforcement

02 February 2016

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