

Decision Notice



Decision 023/2010 Matthew Clark and Coatbridge College

Failure to respond to request for information and request for review

Reference No: 201000041

Decision Date: 16 February 2010

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether Coatbridge College (the College) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr Clark.

Background

1. On 8 October 2009, Mr Clark emailed the College requesting the following information:
 - (a) The number of staff employed by the College paid more than £100, 000 per annum;
 - (b) The number of staff employed by the College paid between £80, 000 and £100,000 per annum;
 - (c) The number of staff employed the College paid less than £80, 000 per annum;
 - (d) The total salary bill for the group of staff in (a);
 - (e) The total salary bill for the group of staff in (b);
 - (f) The total salary bill for the group of staff in (c).
2. Mr Clark did not receive a response to his request for information and emailed the College on 16 November 2009, requesting a review.
3. Mr Clark did not receive a response to his request for review and on 22 December 2009 wrote to the Commissioner, stating that he was dissatisfied with that failure 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 Clark 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

5. On 12 January 2010, the College was notified in writing that an application had been received from Mr Clark and invited to comment on the application, as required by Section 49(3)(a) of FOISA. It was also provided with a copy of Mr Clark's request and request for review.
6. The College responded on 22 January 2010, confirming that it had received Mr Clark's request. The College admitted that it had failed to respond to Mr Clark's request and request for review within the statutory timescales laid down in FOISA, due to an administrative error relating to the management of its general email account for enquiries. It confirmed that it had conducted a review and subsequently provided Mr Clark with information.
7. The investigating officer contacted Mr Clark and confirmed that he had received information from the College. However, he remained dissatisfied with the manner in which his information request and request for review had been handled.

Commissioner's analysis and findings

8. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
9. The College did not provide a response to Mr Clark's request of 8 October 2009.
10. The Commissioner therefore finds that the College failed to respond to Mr Clark's request for information within the 20 working days allowed under section 10(1) of FOISA.
11. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
12. In this case, the College acknowledged that it did not carry out a review until it had received an information notice from the Commissioner following Mr Clark's application. It did not, therefore, respond to Mr Clark's request for review within the 20 working days allowed under section 21(1) of FOISA.
13. The Commissioner notes that the College has apologised to Mr Clark for its failures, and also that it has indicated it is (i) reviewing its processes for handling enquiries and (ii) reviewing its website to ensure that the guidance on Freedom of Information there is as accessible as possible. He believes both of these actions to be important: a request for information should not be overlooked simply because it reaches the authority other than through the "preferred" route.



14. The Commissioner notes that Mr Clark was provided with a response to his request for review on 22 January 2010. In the circumstances, he does not require any action to be taken, in response to this particular application, in relation to the breaches identified above.

DECISION

The Commissioner finds that Coatbridge College (the College) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Clark, in particular by failing to respond to Mr Clark's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. As a response has now been provided to Mr Clark, the Commissioner does not require the College to take any action in relation to these breaches in response to this particular application.

Appeal

Should either Mr Clark or Coatbridge College 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 notice.

Euan McCulloch
Deputy Head of Enforcement
16 February 2010



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

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.

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