

Decision Notice



Decision 083/2010 Mr John Mohan and Dundee City Council

Compliance with requirement for review

Reference No: 201000513
Decision Date: 04 June 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether Dundee City 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 John Mohan (Mr Mohan).

Background

1. On 18 December 2009, Mr Mohan emailed the Council requesting the following information:
 - a. copies of all communications with the Scottish Government since 1 August 2009 relating in any way to the dispensation/derogation requests for the proposed Dundee West End primary school (i.e. St Josephs/Park Place); and
 - b. copies of all communications since 1 August 2009 between representatives of Dundee City Council and representatives of the Scottish Government relating in any way to the proposed Dundee West End primary school (i.e. St Josephs/Park Place).
2. The Council acknowledged Mr Mohan's request on 21 December 2009.
3. On 26 January 2010, having received no response to his request from the Council other than the above acknowledgment, Mr Mohan emailed the Council asking that it review its failure to respond to the request. Mr Mohan said that the matter which gave rise to his dissatisfaction was the Council's failure to respond to the request within 20 working days plus 3 days postage. He drew the Council's attention to sections 10 and 21 of FOISA and said that failure to respond within the timescales specified in these sections was a technical breach of FOISA.
4. The Council notified Mr Mohan of the outcome of its review on 23 February 2010, stating that it had sent a reply on 20 January 2010, and this was within the time limit set out in FOISA. The Council advised that if Mr Mohan had not received its response it would arrange for a copy to be sent to him.
5. Mr Mohan received the Council's letter of 20 January and wrote again to the Council on 24 February 2010. He confirmed that he had received the Council's response, but pointed out that it was postmarked 25 January 2010 and franked second class. Consequently, he advised, he had not received it when he submitted his request for review of 26 January 2010, and therefore he still required a response to his request for review. He went on to express his dissatisfaction at the withholding of information under several exemptions in FOISA, as set out in the letter of 20 January 2010.



6. The Council replied to Mr Mohan on 5 March 2010 and stated that it did not know why its letter of 20 January 2010 was not postmarked until 25 January 2010. The Council apologised for the delay in the reply reaching Mr Mohan.
7. Mr Mohan wrote to the Commissioner on 8 March 2010, stating that he was dissatisfied with the Council's failure to respond to his information request or to respond meaningfully to his request for review within the relevant timescales required by FOISA, and also with its failure to provide the information he had requested, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Mohan 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

9. On 19 April 2010, the Council was notified in writing that an application had been received from Mr Mohan and was invited to comment on that application.
10. The Council responded that it did not know why its letter of 20 January 2010 was not postmarked until 25 January 2010. It explained that on receiving Mr Mohan's email of 24 February 2010, the staff who dealt with the outgoing mail had been asked whether they recollected the response letter of 20 January 2010: given the volume of outgoing mail, they could not.
11. The Council said that it had conducted a review in its email of 23 February 2010.

Commissioner's analysis and findings

12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
13. Given that its response to Mr Mohan's request was postmarked 25 January 2010, the Council did not provide a response to Mr Mohan's information request of 18 December 2009 within the timescale specified in section 10(1).
14. Given that the response was dated 20 January 2010 and having taken account of the Council's submissions in this connection, the Commissioner accepts that it was intended to be delivered within the requisite timescale.



15. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
16. Mr Mohan sought a review from the Council in his email of 26 January 2010, stating that he had not received a response to his request within the statutory timescale. The Council responded on 23 February 2010, stating that a response had been sent on 20 January 2010. On the question of failure to respond within the requisite timescale, therefore, the Commissioner therefore finds that the Council responded to Mr Mohan's requirement for review of 26 January 2010 within the 20 working days allowed under section 21(1) of FOISA.
17. Mr Mohan wrote to the Council again on 24 February 2010, however, confirming that he still required a response to his requirement for review and advising that he was dissatisfied with the Council withholding of the information he had requested. In the circumstances, this should have been dealt with as a requirement for review in respect of the withholding of the requested information: it met all of the requirements of section 20(3) of FOISA in this regard.
18. The Council's response of 5 March 2010 was provided within the requisite 20 working days, but simply dealt again with the delay in issuing the letter of 20 January. It did not deal with Mr Mohan's expressed dissatisfaction that the requested information had been withheld, as that same letter had advised him.
19. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
 - i. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - ii. substitute for any such decision a different decision; or
 - iii. reach a decision, where the complaint is that no decision had been reached.
20. Having done one of these 3 things, the authority is required, within the timescale specified in section 21(1), to give the applicant notice in writing of what it has done with a statement of its reasons for doing so.
21. The Commissioner finds that the Council has failed to carry out a review in respect of Mr Mohan's dissatisfaction with its withholding of the information requested in his email of 18 December 2009, that information having been withheld as set out in the Council's letter of 20 January 2010 and Mr Mohan's dissatisfaction being set out in his email of 24 February 2010, in accordance with the requirements of section 21 of FOISA. He therefore requires the Council to carry out such a review and to notify Mr Mohan of the outcome in terms of section 21(5) of FOISA.



DECISION

The Commissioner finds that the Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Mohan.

The Commissioner finds that the Council failed to respond to Mr Mohan's request for information within the timescale laid down by section 10(1) of FOISA.

The Commissioner also finds that the Council failed, in respect of Mr Mohan's expressed dissatisfaction with the Council's withholding of the information he had requested, to carry out a review meeting the requirements of section 21, and in particular sections 21(1), 21(4) and 21(5), of FOISA. It did, however, comply with those requirements on the question of failure to comply with Mr Mohan's original request within the requisite timescale.

The Commissioner therefore requires the Council to conduct a review which addresses Mr Mohan's dissatisfaction with Council's withholding of the information he requested and otherwise meets the requirements of section 21 of FOISA, and to notify Mr Mohan of the outcome in terms of section 21(5) of FOISA, by 21 July 2010.

Appeal

Should either Mr Mohan or Dundee City 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 notice.

Euan McCulloch
Deputy Head of Enforcement
04 June 2010



Appendix

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

...

20 Requirement for review of refusal etc.

...

- (3) A requirement for review must-
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify-
- (i) the request for information to which the requirement for review relates; and
- (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

...



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.

...