

Decision Notice



Decision 100/2010 Mr John McClelland and City of Edinburgh Council

Failure to respond to requirement for review

Reference No: 201001027
Decision Date: 16 June 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether City of Edinburgh 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 McClelland.

Background

1. On 26 January 2010, Mr McClelland wrote to the Council requesting certain information on the regarding of specified posts.
2. The Council responded on 25 February 2010, informing Mr McClelland that certain relevant information was available to staff on its website and its Human Resources Service Centre. He was provided with a copy of the Capital Job Evaluation Scheme and informed that the particular information he had requested was exempt in terms of sections 25(1), 30(c) and 33(1)(b) of FOISA.
3. On 4 March 2010, and again on 1 April 2010, Mr McClelland wrote to the Council asking for clarification regarding the above response and in particular the use of the provisions of FOISA outlined above.
4. On 12 April 2010, Mr McClelland wrote to the Council specifically requesting a review of its decision. In particular, Mr McClelland drew the Council's attention to his communications of 4 March and 1 April 2010, to which he had received no response.
5. Mr McClelland did not receive a response to his request for review and on 17 May 2010 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.
6. The application was validated by establishing that Mr McClelland 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

7. On 1 June 2010, the Council was notified in writing that an application had been received from Mr McClelland and was invited to comment on the application. The Council responded on 14 June 2010, accepting that it should to have dealt with Mr McClelland's letter of 4 March 2010 as a request for review. The Council intimated that this option was not followed and there was no record of his subsequent letter being correctly logged and allocated. Consequently, there was confusion as to how his other correspondence should have been dealt with. The Council acknowledged a significant failing on its part and stated that it intended to write to Mr McClelland, apologising for the difficulty he had experienced and providing him with an explanation in response to his questions.
8. The Council further intimated that it had recently reviewed its procedures in relation to FOISA and taken steps which it believed should prevent such failings in the future.

Commissioner's analysis and findings

9. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below).
10. The Council did not provide a response to Mr McClelland's requirement for review of either 4 March 2010 or 12 April 2010, or (it would appear) carry out the review Mr McClelland requested. Consequently, the Commissioner finds that the Council failed to comply with section 21 of FOISA.
11. The Council intimated that it would write to Mr McClelland, and apologising for the difficulties he had experienced and providing an explanation in response to his questions. However, the Council also has an obligation to provide a response to Mr McClelland's requirement for review which satisfies the requirements of section 21 of FOISA (see Appendix below). As the Council has not yet complied with the requirement in accordance with section 21, the Commissioner requires it to do so.



DECISION

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), by failing to comply with Mr McClelland's requirement for review as required by section 21 of FOISA.

The Commissioner therefore requires the Council to respond to Mr McClelland's requirement for review, in accordance with the requirements of section 21 of FOISA, by 2 August 2010.

Appeal

Should either Mr McClelland or City of Edinburgh 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
16 June 2010



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.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.



- (7) Regulations under subsection (6) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.