

Decision Notice



Decision 107/2011 Mr Allan Milligan and Glasgow City Council

Failure to respond

Reference No: 201100487 and 201100488
Decision Date: 31 May 2011

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether Glasgow City Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to three information requests made by Mr Allan Milligan.

Background

1. This decision considers the Council's handling of three information requests, which were contained in two communications from Mr Milligan. These will be referred to as requests 1, 2 and 3 in what follows.
2. On 8 November 2010, Mr Milligan wrote to the Council requesting that it provide copies of all penalty charge notices [relating to parking in a marked parking bay] claimed to be outstanding and for which he was deemed liable, over a specified period. This will be referred to as **request 1**.
3. On the same date, Mr Milligan wrote to the Council making two further requests within a single letter. These sought:
 - The contemporaneous notes taken by a parking attendant present at a particular incident (this will be referred to as **request 2**) and
 - Details of and plate number of certain pay and display bays (as prescribed in the Traffic Signs Regulations and General Directions 2002). This will be referred to as **request 3**.
4. The Council did not provide any response to the requests detailed above. On 18 January 2011 (in relation to request 1) and 28 December 2010 (in relation to requests 2 and 3), Mr Milligan wrote to the Council requesting reviews of its handling of his requests, and asking again that the information be supplied to him.
5. Mr Milligan did not receive any response to either of his requests for review. On 11 March 2011, he wrote to the Commissioner, stating that he was dissatisfied with that failure in relation to requests 2 and 3 and applying for a decision in terms of section 47(1) of FOISA. This application was given the case reference number 201100488.
6. On 15 March, Mr Milligan wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to respond to request 1, and applying for a decision in terms of section 47(1) of FOISA. This application was given the case reference number 201100487.



7. Both applications were validated by establishing that Mr Milligan had made his requests 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 each request. The cases were then allocated to an investigating officer, and they have been conjoined for the purposes of the investigation and this decision.

Investigation

8. On 18 April 2011, the Council was notified in writing that the applications had been received from Mr Milligan and was invited to comment on the applications. In particular, it was asked to explain why it had failed to provide any response to the requests detailed above.
9. The Council responded on 5 May 2011. It acknowledged that it had not responded to Mr Milligan's information requests, but indicated that it had not done so because it considered them to be vexatious for the purposes of section 14(1) of FOISA.
10. It submitted that it had not been under an obligation to respond to Mr Milligan's requests in these circumstances. Section 16(5) of FOISA provides that where a request is judged to be vexatious for the purposes of section 14(1), the applicant need not be notified of this decision if -
 - (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
 - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.
11. The Council submitted that it had judged that requests 1, 2 and 3 were vexatious for the purposes of section 14(1) and substantially similar to other requests that it had previously judged to be vexatious (in July 2010). It also maintained that, in these circumstances, it was reasonable for it not respond to Mr Milligan's requests.

Commissioner's analysis and findings

12. The Commissioner has first of all considered whether the Council was required to provide any response to Mr Milligan's information requests in terms of section 10(1) of FOISA.

Section 10(1) – Timescale for compliance

13. 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.



14. It is clear that the Council did not provide any response to either of the letters containing Mr Milligan's requests 1, 2 and 3 within the timescale specified in section 10(1). However, the Council argued in this case that it did not breach the requirements of section 10(1), because it was entitled not to provide any response as a result of the application of section 16(5) of FOISA.
15. Therefore, in order to determine whether or not the Council acted in breach of section 10(1) of FOISA, the Commissioner must determine whether section 16(5) disapplied the obligation for the Council to respond to any or all of the three requests contained in Mr Milligan's two letters of 8 November 2010.

Section 16(5)

16. As noted above, section 16(5) of FOISA provides that, within the timescale required by section 10(1) of FOISA, a public authority which claims that section 14 applies in relation to a request must give the applicant a notice which states that it so claims. However, it also provides that the notice need not be given if-
 - (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
 - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.
17. The Commissioner's decision in this case will not reach any judgement as to whether the requests under consideration are vexatious. It is sufficient for the purposes of this decision (which is concerned only with the question of whether the Council complied with the technical requirements of FOISA) to note that the Council has judged each of the requests to be vexatious. The matter to be addressed by the Commissioner is whether, having reached the conclusion that section 14(1) was applicable, the Council was entitled not to give notice of that decision to Mr Milligan.
18. In order to reach a conclusion on the application of section 16(5), the Commissioner will consider two separate tests:
 - Has the Council given notice to Mr Milligan that section 14 of FOISA has been judged to apply to a previous identical or substantially similar request?
 - If yes, would it be unreasonable in all the circumstances to expect the Council to serve a further notice in relation to the request(s) under consideration.

Previous notice that section 14(1) was applicable

19. The Council has provided copies of four letters that were sent to the Council by Mr Milligan dated 30 June and 6 July 2010. These letters sought information relating to parking and were treated by the Council as requests in terms of FOISA.



20. The Council issued its response to these requests in a single letter on 29 July 2010. This indicated that the Council considered these requests were vexatious in terms of section 14(1) of FOISA, and so the Council was not obliged to respond to the requests.
21. Having confirmed that the Council has previously given notice to Mr Milligan that requests he had submitted to the Council had been judged to be vexatious, the Commissioner must next consider whether the requests under consideration in this case are identical or substantially similar to those previously judged to be vexatious.
22. The requests under consideration in this decision sought:
Request 1 - Copies of all penalty charge notices [relating to parking in a marked parking bay] claimed to be outstanding and for which Mr Milligan was deemed liable, over a specified period.
Request 2 - The contemporaneous notes taken by a parking attendant present at a particular incident.
Request 3 - Details of and plate number of certain pay and display bays (as prescribed in the Traffic Signs and General Directions 2002).
23. The requests made on 30 June and 6 July 2010 requested the following:
 - Details of a pay and display bay as prescribed in the Traffic Signs Regulations and General Directions.
 - The section, subsection etc. contained in the Road Traffic Act 1991 as amended to which the Council was referring [when reference had been made to this Act in previous correspondence].
 - Do Council employees enjoy an exemption from criminal prosecutions if they submit false statements and/or lie to the Parking Adjudicator?
24. Comparison of the groups of requests set out in paragraphs 22 and 23 above makes clear that those under consideration in this decision are not identical to any of those to which the Council's notice of 29 July 2010 related.
25. The Commissioner has therefore gone on to consider whether any of those set out in paragraph 22 can be said to be substantially similar to any of those in paragraph 23. He has first of all noted that the two groups of requests both relate to the same subject matter. However, he does not consider this observation to be sufficient to accept that the requests themselves are substantially similar.
26. The Commissioner considers that the term "substantially similar", where applied to an information request, allows that a request might be expressed in different terms or seek somewhat different information. However, he considers that this term can only be found to be applicable where a request seeks largely the same type or set of information that was sought in another request. He does not consider that a request seeking different information on the same subject matter as previous requests can properly be found to be substantially similar to those previous requests.



27. In this case, the Commissioner cannot accept that either of requests 1 or 2 are substantially similar to any of those listed in paragraph 23 above. In relation to these two requests, therefore, the Commissioner concludes that section 16(5) did not remove the obligation for the Council to issue a response if it considered these requests to be vexatious in terms of section 14(1). Given that the requests are seeking quite different information (albeit in continuation of Mr Milligan's ongoing correspondence on a similar subject matter), the Commissioner concludes that the Council remained obliged to provide a response to these requests.
28. Since the Council did not supply any response to these requests, the Commissioner finds that the Council failed to comply with section 10(1) of FOISA in relation to requests 1 and 2.
29. However, the Commissioner recognises that request 3 is substantially similar to the request set out in the first bullet point in paragraph 23 above, which was refused on the grounds that it was vexatious in the Council's letter of 29 July 2011.
30. In relation to request 3, the Commissioner has proceeded to consider whether it would be unreasonable in the circumstances to expect the Council to issue a further notice indicating that the request of 8 November 2010 was also considered to be vexatious in terms of section 14(1) of FOISA.

Would it be unreasonable to expect the Council to issue a notice in relation to request 3

31. In considering this point, the Commissioner has noted that request 2 and request 3 were sent to the Council in a single letter, and on the same date as a separate letter containing request 1.
32. Had request 3 been submitted in isolation, or only in conjunction with other information requests which the Council considered to be vexatious, and which were substantially similar to other requests that had previously been refused on the grounds that they were vexatious, then the Commissioner may have concluded that the Council would have been justified in declining to provide a response to request 3.
33. However, having concluded that the Council was obliged to issue responses to request 1 and particularly request 2, the Commissioner does not consider it to be unreasonable for the Council to respond also to request 3, making clear that this request was also considered to be vexatious. Addressing this request alongside the response to request 2 would cause only minimal additional burden, since a response would in any event have had to be prepared in relation to request 2.
34. The Commissioner notes that, had the Council acted in accordance with Part 1 of FOISA and issued responses to requests 1 and 2 within the timescale required by section 10(1) of FOISA, the omission of any response to request 3 within its response to request 2 would have caused confusion on the part of Mr Milligan as to why the Council stayed silent on one of two requests that were submitted together.



35. In the light of these comments, the Commissioner considers that, in all the circumstances of this case (and particularly in the light of the observation that request 3 was submitted to the Council in a letter which also contained request 2), it would not have been unreasonable to expect the Council to provide a response to request 3, alongside the response that it was obliged to provide in relation to request 2.
36. In the circumstances, the Commissioner therefore concludes that the Council remained under an obligation to respond to request 3 also, notwithstanding the facts that the Council considered it to be vexatious, and it was substantially similar to a request that was previously refused on the grounds that it was vexatious.
37. Since the Council did not supply any response to request 3, the Commissioner finds that the Council failed to comply with section 10(1) also in relation to that request.

Section 21 – Review by Scottish Public Authority

38. The Council did not respond to either of Mr Milligan's requests for review.
39. 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.
40. 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
 - 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.
41. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA.
42. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
43. Section 21(8), however, provides that a public authority is not obliged to comply with a requirement for review in cases where the requirement itself is vexatious, or where the request is one with which, the authority is not required to comply, because it is vexatious by virtue of section 14(1).
44. Where an authority judges that section 21(8) is applicable, section 21(9) states that it must give the applicant notice of this within the 20 working day period allowed by section 21(1).



45. The Commissioner notes that there is no provision equivalent to section 16(5) of FOISA, which removes the obligation to issue a response following receipt of a requirement for review. Even if a public authority has determined appropriately that the application of section 16(5) removes the obligation to issue a notice stating that section 14 of FOISA has been judged to apply to a request, the authority remains obliged to respond in some way to a request for review in relation to the same request.
46. In this case, the Council could have responded to Mr Milligan's two requests for review either:
 - a. in terms of section 21(4)(c) and (5), by issuing a response to Mr Milligan's requests for information where none had been supplied before, or
 - b. in terms of sections 21(8) and (9), by indicating that the Council did not intend to conduct a review, because the requests (and/or the requirements for review) were considered to be vexatious.
47. Since it did neither, the Commissioner must conclude that the Council failed to comply with the requirements of section 21 of FOISA, in particular by failing to either conduct a review and provide notice of its outcome in terms of section 21(4) and (5) of FOISA, or to provide notice to Mr Milligan in line with section 21(9), within the timescale specified in section 21(1).
48. The Commissioner now requires the Council to either conduct a review and provide notice of its outcome in terms of section 21(4) and (5) of FOISA, or to provide notice to Mr Milligan in line with section 21(9) that it has determined that it is not obliged to conduct a review by virtue of section 21(8).

DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Allan Milligan, in particular by failing to respond to his requests for information and requirements for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner has concluded that the provision in section 16(5) did not disapply the obligation on the Council to issue a response within the timescale required by section 10(1) in this case.

The Commissioner therefore requires the Council to either (a) conduct reviews in relation to Mr Milligan's requests (which should be in terms of section 21(4)(c) of FOISA) and notify Mr Milligan of the outcome of the reviews in terms of section 21(5), or (b) give notice in terms of section 21(9) that it has determined (in line with section 21(8)) that it is not required to conduct the reviews.

The Council should do so by 18 July 2011.

Decision 107/2011
Allan Milligan
and Glasgow City Council



Appeal

Should either Mr Milligan or the 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.

Margaret Keyse
Head of Enforcement
31 May 2011



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

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

- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

16 Refusal of request

...

- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if-

- (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and

- (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.

...

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.
- ...
- (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.