

Decision Notice



Decision 147/2009 Mr David Walker and Falkirk Council

Council procedures

Reference No: 200902043

Decision Date: 18 December 2009

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Scottish Information Commissioner

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Summary

Mr David Walker asked Falkirk Council (the Council) to supply any recorded information relating to two questions arising from previous correspondence with the Council. The Council initially failed to reply, and Mr Walker asked for a review of this decision. The Council then wrote to advise Mr Walker that information relating to his first request was not held. It provided some information associated with, but not covered by, the terms of his second request. Mr Walker remained dissatisfied and applied for a decision from the Scottish Information Commissioner.

Following an investigation, the Commissioner found that the Council did not hold any recorded information covered by either of Mr Walker's requests. The Commissioner found that the Council had not given Mr Walker notice that some of the information requested was not held, and in this respect had failed to comply with section 17(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner also found that the Council had failed to comply with the statutory timescale for responding to the request. He did not require the Council to take any action in respect of these failures.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1) (Time for compliance) and 17(1) (Notice that information is not held); 20(1) (Requirement for review of refusal etc.); 21(1) and (4)(c) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Appendix 1 forms part of this decision.

Background

1. On 24 April 2009, Mr Walker wrote to the Chief Executive of the Council, to request “[t]hat Falkirk Council issues Instructions and Guidance, to Head Teachers, and Teachers, on what action they take, if, or when, a Pupil, unbeknown to his/her/Parent/s, informs them that he/she does not wish to be involved in Religious Observation”.



2. On 29 May 2009, Mr Walker wrote again to the Council, noting that he had not had a reply to his letter of 24 April 2009, and submitting two information requests which are the subject of this Decision Notice, and which relate to the correspondence described in the previous paragraph. He asked for recorded information held by the Council relating to:
 - a) Citizens residing in the Falkirk area being banned from making such a request to Falkirk Council.
 - b) The [Chief Executive of] Falkirk Council being authorised to ignore, and take no action on such a request.
3. On 4 July 2009, having had no response to his letter of 29 May 2009, Mr Walker wrote to the Council to request a review of its decision.
4. On 13 July 2009, the Council wrote to Mr Walker with reference to his letter of 29 May 2009. It confirmed that the Council did not hold any recorded information banning citizens from making requests of the type made by Mr Walker [in his letter of 24 April 2009]. It enclosed a letter previously sent to Mr Walker which confirmed that the Chief Executive of the Council would not engage on further correspondence with Mr Walker on the matter he raised, and that further letters from him would remain unanswered. The Council provided Mr Walker with details of his right to request a review of its response.
5. On 16 July 2009, Mr Walker wrote back to the Council. He pointed out that the Council had not answered the second request in his letter of 29 May 2009, and that he had already requested a review of this matter on 4 July 2009. He advised that he would wait for answers to these points before deciding what action to take.
6. Having had no further response from the Council, on 17 August 2009 Mr Walker wrote to the Commissioner stating that he was still waiting for answers to the second part of the request sent on 29 May 2009, the review requested on 4 July 2009, and the letter dated 16 July 2009. He applied for a decision from the Commissioner in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Walker 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.
8. During the investigation of Mr Walker's application, the Council completed a further review of its handling of his request of 29 May 2009, and on 8 October 2009 wrote to him with the outcome.
9. On 26 October 2009, Mr Walker wrote to the Commissioner to express dissatisfaction with the Council's response of 8 October 2009. He reiterated that he had not yet had a reply to a request for information made on 29 May 2009.



Investigation

10. On 2 October 2009, the Council was notified in writing that an application had been received from Mr Walker and was given an opportunity to comment on the application (as required by section 49(3)(a) of FOISA). On 27 October 2009, the Council advised that Mr Walker had expressed dissatisfaction with its response of 8 October 2009, and was invited to comment. The Council was also asked whether it held any recorded information relating to the second part of Mr Walker's request of 29 May 2009.
11. In response, the Council explained its general obligations in relation to a refusal to correspond, and referred to guidance available online from the website of the Scottish Public Services Ombudsman on the subject of maladministration.
12. The Council later confirmed that it did not hold any recorded information that fell within the scope of the second part of Mr Walker's request of 29 May 2009.
13. The Council also provided a copy of a letter to Mr Walker sent in July 2006, which sets out the procedure to be followed regarding deputations to the Council and provided contact details for the Scottish Public Services Ombudsman.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Walker and the Council and is satisfied that no matter of relevance has been overlooked.

Compliance with section 17 (Information not held)

15. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
16. In its letter of 7 July 2009, the Council advised Mr Walker that it did not hold recorded information relating to the first part of his request (Citizens being banned from making a certain type of request to the Council). Mr Walker did not challenge this response in his letter of 16 July 2009, or in his application for a decision from the Commissioner. Accordingly, the Commissioner will not consider this part of Mr Walker's request any further in this Decision Notice.
17. Mr Walker twice complained to the Council (4 July 2009 and 16 July 2009) that he had not received a reply to the second part of his request (information about the Chief Executive being authorised to ignore and take no action on a request that it should issue instructions to schools on what procedure to follow when a pupil chose to withdraw from religious observance).



18. In relation to the way it had dealt with this part of the request, the Council explained that the Chief Executive had previously written to Mr Walker to advise that she would not respond further to correspondence on the subject of religious observance, and that a copy of this letter (from July 2007) had been enclosed with the response to his request of 29 May 2009. The Council did not consider this information to fall within the scope of the request, but explained that it had been sent to Mr Walker in acknowledgement of the Chief Executive's decision to cease corresponding with him on this matter.
19. After making further enquiries to the Council, the Commissioner is satisfied that it does not hold any recorded information which falls within the scope of the second part of Mr Walker's request. However, the Council did not respond to this part of Mr Walker's request in terms of FOISA and failed to give Mr Walker notice that it did not hold the information he had asked for.
20. The Commissioner therefore finds that the Council failed to comply with section 17(1) of FOISA in dealing with the second part of Mr Walker's request.

Compliance with statutory timescales

21. Mr Walker made his requests on 29 May 2009, but did not receive any response within the 20 working day timescale laid down in section 10(1) of FOISA. He wrote to the Council on 4 July 2009 to express his dissatisfaction with the lack of response, in a letter which the Commissioner regards as a valid request for review in terms of section 20(1) of FOISA. However, the Council clearly did not regard his letter as a request for review, and on 13 July 2009, issued a response which made reference to his request of 29 May 2009 and provided details of the right to seek a review. Mr Walker then wrote again to the Council (16 July 2009) in a letter which made it clear that he was still waiting for the review requested on 4 July to be carried out. The Council finally issued its review response on 8 October 2009.
22. The Council has explained that part (b) of Mr Walker's request related to the letter he had written on 24 April 2009 (as described in paragraph 1 above), and that this matter has had a long history, during which the Chief Executive had previously written to Mr Walker to advise that she would no longer respond to him on the subject of religious observance. This was why no response was sent to the letter of 24 April 2009.
23. The Commissioner does not consider Mr Walker's letter of 24 April 2009 to be an information request in terms of section 1(1) of FOISA. However, Mr Walker's letter of 29 May 2009 contained two requests for recorded information, and should have been dealt with in compliance with Part 1 of FOISA. Although the letter was addressed to the Chief Executive, it is the Council itself which has responsibility for complying with FOISA when dealing with information requests. FOISA requires Scottish public authorities to respond to requests within 20 working days. The Commissioner therefore finds that the Council failed to comply with section 10(1) of FOISA.



24. The Commissioner considers that, in terms of section 20(1) of FOISA, Mr Walker's letter of 4 July 2009 should be regarded as a valid requirement for review of the Council's handling of his request of 29 May 2009. The Commissioner considers the Council's letter of 13 July 2009 constitutes a response to this request for review in terms of section 21(4)(c) of FOISA (while accepting that the Council did not regard it as such). He therefore finds that the Council complied with the statutory timescale for responding to a request for review, as laid down in section 21(1) of FOISA, even though the Council did not issue what it considered to be the review response until 8 October 2009.

DECISION

The Commissioner finds that Falkirk Council (the Council) failed to comply in full with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Walker. By failing to give written notice that some of the requested information was not held, and by failing to comply with statutory timescales for response, the Commissioner finds that the Council did not comply with sections 17(1), and 10(1) of FOISA.

The Commissioner does not require the Council to take any action in response to this failure.

Appeal

Should either Mr Walker or Falkirk 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
18 December 2009



Appendix 1

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

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...



20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that 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 information for which the requirement relates -

...

- (c) reach a decision where the complaint is that no decision has been reached.