

Decision Notice



Decision 155/2013 Mr Andrew Fox and Stirling Council

Failure to respond to requirement for review

Reference No: 201301274
Decision Date: 31 July 2013

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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



Summary

This decision considers whether Stirling 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 Fox.

Background

1. On 21 December 2012, Mr Fox wrote to the Council requesting certain specified information.
2. The Council responded to Mr Fox's email of 21 December 2012, but indicated that it would respond separately to the information request within that email.
3. The Council responded to Mr Fox's request on 25 February 2013, but this response was not received by Mr Fox.
4. On 28 March 2013, Mr Fox wrote to the Council, requesting a review in respect of its failure to respond.
5. Mr Fox did not receive a response to his requirement for review and on 27 May 2013 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 Fox made a request for information to a Scottish public authority and 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 6 June 2013, the Council was notified in writing that an application had been received from Mr Fox and was invited to comment on the application.
8. The Council responded and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

9. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
10. The Council explained that it had intended to deal with Mr Fox's review request on the basis that his request had been responded to. Regrettably, it indicated, there was a breakdown in internal communications at this point and the Council did not contact Mr Fox as intended.
11. The Council explained that it had since written to Mr Fox with another copy of its response to his request, asking whether he now wished to withdraw his requirement for review. It provided a copy of its email of 17 June 2013.
12. Since the Council did not provide a response to Mr Fox's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. Where the basis of the requirement for review is that no decision has been reached on the original request, section 21(4)(c) requires the authority to reach a decision.
14. The Commissioner has considered the Council's email of 17 June 2013 carefully, along with its submissions. She does not consider that it was intended to provide an outcome to Mr Fox's requirement for review and therefore cannot accept that a review (even in terms of section 21(4)(c)) has been carried out.
15. Therefore, as no review has been carried out in this case, the Commissioner now requires the Council to do so and notify Mr Fox of the outcome, in accordance with section 21 of FOISA.

DECISION

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Fox, in particular by failing to respond to Mr Fox's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner therefore requires the Council to provide Mr Fox with a response to his requirement for review, meeting the requirements of section 21 of FOISA, by 16 September 2013.



Appeal

Should either Mr Fox or Stirling 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.

Euan McCulloch
Deputy Head of Enforcement
31 July 2013



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.

...

- (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.

...