

Decision Notice



Decision 170/2010 Dr Neil Polwart and West Lothian Council

Compliance with required timescales

Reference No: 201001542

Decision Date: 27 September 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether West Lothian 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 Dr Neil Polwart (Dr Polwart).

Background

1. On 18 May 2010, Dr Polwart wrote to the Council requesting information concerning a proposed alteration to the catchment area of a named school.
2. The Council responded by email on 1 July 2010 providing some information to Dr Polwart and also indicating, in terms of section 17 of FOISA, that some of the requested information was not held by the Council. Unfortunately Dr Polwart's email address was entered incorrectly and he did not receive the response until this error was corrected and the email resent the following day.
3. On 2 July 2010, Dr Polwart wrote to the Council requesting a review of its decision. In particular, Dr Polwart drew the Council's attention to his concern that, while some of the information provided was helpful and answered some points in his letter outside his formal request for information, the matters of record that formed the basis of his request were dismissed under section 17.
4. The Council contacted Dr Polwart on 2 August 2010 apologising for the delay in responding to his request for review and indicating that its investigations were ongoing.
5. Dr Polwart did not receive any further response to his request for review and on 3 August 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 Dr Polwart 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 25 August 2010, the Council provided Dr Polwart with a response to his request for review, in which it included a substantial amount of information it considered to fall within the scope of his request.
8. The investigating officer contacted Dr Polwart who confirmed that, while he was content with the information provided by the Council, he remained dissatisfied with the Council's failure to adhere to the statutory timescales within FOISA as he believed that the Council treated the 20 working day period as a target rather than a legal obligation. He confirmed that he wished the Commissioner to issue a decision in relation only to these matters.
9. On 13 September 2010, the Council was notified in writing that an application had been received from Dr Polwart and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
10. The Council subsequently responded to the Commissioner acknowledging that it had breached the statutory 20 working day period both in respect of its response to Dr Polwart's request and also in relation to his subsequent request for review.

Commissioner's analysis and findings

11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
12. The Council drew the Commissioner's attention to information contained in its response to Dr Polwart's request for review, dated 25 August 2010, in which it apologised to Dr Polwart for the delay in responding to his initial request and provided an explanation of the circumstances that resulted in that delay.
13. The Council clarified that the timing of Dr Polwart's initial request coincided with a significant peak in the workload of Education Services due to meeting other statutory requirements coupled with fewer staffing resources being available in the Policy and Information Team (the team dealing directly with the request) due to the Council's Tough Choices reductions. However, the Council recognised that insufficient attention had been paid to the request.
14. Given that the Council did not respond to Dr Polwart's request of 18 May 2010 until 1 July 2010, the Commissioner finds that the Council failed to respond to Dr Polwart's request for information within the 20 working days allowed by section 10(1) of FOISA.



15. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
16. The Council informed the Commissioner that the nature of the information requested by Dr Polwart and the need to consult with a key member of staff with specialist knowledge, who had been absent on annual leave, had delayed the response to the request for review. The Council added that it had made a considerable effort to ensure that Dr Polwart was provided with a thorough response to his request for review, albeit outwith the 20 working days time limit.
17. Given that the Council did not respond to Dr Polwart's request for review of 2 July 2010 until 25 August 2010, the Commissioner finds that the Council failed to respond to Dr Polwart's request for review within the 20 working days allowed by section 21(1) of FOISA.
18. Although the Commissioner does not require the Council to take any remedial action in respect of these technical breaches, it should be noted that his staff have recently carried out an assessment of the Council's practice with respect to information request handling under FOISA and the EIRs. This included an assessment of the Council's compliance with the timescales for responding to requests for information and requirements for review and the findings of this will be discussed in the forthcoming assessment report.

DECISION

The Commissioner finds that West Lothian Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Dr Neil Polwart, in particular by failing to respond to Dr Polwart's request for information and subsequent requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Council did provide responses to both Dr Polwart's request and request for review, albeit outwith the statutory 20 working day period for compliance, the Commissioner does not require the Council to take any action in response to these failures.



Appeal

Should either Dr Polwart 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.

Claire Sigsworth
Deputy Head of Enforcement
27 September 2010



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.

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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.

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.

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