

Decision Notice 175/2021

Ferguson Marine Engineering Limited – failure to respond

The Applicant

Public authority: Caledonian Maritime Assets Limited

Case Ref: 202100594



Scottish Information
Commissioner

Summary

The Applicant asked CMAL for information about Ferguson Marine Engineering Limited. CMAL asked the Applicant to provide proof of identity. The Applicant refused to do this, although did subsequently provide the Commissioner with proof of identity.

Although the Commissioner was satisfied that it was reasonable for CMAL to seek proof of identity, he had no option but to find that CMAL had failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

Background

1. The Applicant made an information request to Caledonian Maritimes Assets Limited (CMAL) on 25 March 2021.
2. On 15 April 2021, CMAL asked the Applicant to provide proof of their identity.
3. On that same day, the Applicant replied that they would be happy to supply personal information, if requested, to the Commissioner, but not before that stage. On this basis, the Applicant asked CMAL to review their initial response.
4. CMAL responded on 20 April 2021, stating that it was not refusing to provide the information requested but that, in order to process the request, they were legally required to ensure the request was valid. CMAL stated that they had to do this at this stage in the processing of the request.
5. On the same day, the Applicant reiterated his request for a review to CMAL. CMAL reiterated that they required to see proof of ID to validate the request and told the Applicant they would not be taking any further action until they had received this.
6. The Applicant applied to the Commissioner for a decision on 9 May 2021, stating that they were dissatisfied with CMAL's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).
7. On 17 May 2021, CMAL was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
8. On 19 May 2021, CMAL advised the validation officer that it was unsure whether a pseudonym was being used by the Applicant as the request was similar to one received earlier by a different named applicant.
9. The validation officer wrote to the Applicant on 25 June 2021, asking them to provide evidence of identity, preferably photographic (e.g. a passport or driving licence), together with a covering letter which included a postal address for correspondence.
10. On 29 June 2021, the Commissioner's office checked the identity evidence provided by the Applicant and found it to be satisfactory. The case was then allocated to an investigating officer.
11. On 19 July 2021, the investigating officer wrote to CMAL explaining that the Applicant's identity had now been verified and advising CMAL that it may now wish to provide a review response to the Applicant.

12. On 3 August 2021, CMAL provided a review response to the Applicant, providing website links to where some of the information could be found and withholding some of the information as contractually confidential. CMAL advised the Applicant that they could appeal to the Commissioner if they were unhappy with this review response.

Commissioner's analysis and findings

13. Section 8(1)(b) of FOISA makes it clear that a request must state the name of the requester to be valid. Although FOISA is described as applicant blind, this does not mean that requests can be anonymous, but that who the requester is should not make a difference to how the request is handled (subject to exceptions).
14. If someone has used a fake name to make a request, the request will not be valid and the public authority does not need to comply with the request. Where a public authority wishes to confirm the identity of the requester, it can ask the requester to provide proof of identity.
15. The Commissioner expects public authorities to check the validity of a request only where there are reasonable grounds for believing that the request might not be valid. The Commissioner is satisfied that the public authority had reasonable grounds for seeking proof of identity in this case.
16. 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. This is subject to qualifications which are not relevant in this case.
17. It is a matter of fact that CMAL did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
18. 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. Again, this is subject to qualifications which are not relevant in this case.
19. It is a matter of fact that CMAL did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

Decision

Although the Commissioner is satisfied that it was reasonable for Caledonian Maritime Assets Limited (CMAL) to seek proof of identity, the request for information proved to be valid in terms of section 8 of the Freedom of Information (Scotland) Act 2002 (FOISA). Therefore, the Commissioner has no option but to find that CMAL failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

In the circumstances, and given that a review response has now been provided to the Applicant, the Commissioner does not require CMAL to take any action in respect of these failures.

Appeal

Should either the Applicant or CMAL wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
3 November 2021

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