

Decision Notice



Decision 177/2012 Mr John Ferguson and Glasgow City Council

Compliance with required timescales

Reference No: 201201500

Decision Date: 29 October 2012

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Rosemary Agnew

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 an information request made by Mr Ferguson.

Background

1. On 15 February 2012, Mr Ferguson wrote to the Council requesting certain specified information.
2. The Council acknowledged Mr Ferguson's request on 7 March 2012.
3. Having received no further response to his request, Mr Ferguson wrote to the Council on 15 March 2012, requesting a review of its failure to respond.
4. Mr Ferguson did not receive a response to his requirement for review and, on 5 August 2012, 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.
5. The application was validated by establishing that Mr Ferguson 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

6. On 23 August 2012, the Council was notified in writing that an application had been received from Mr Ferguson and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Council responded on 5 September 2012, acknowledging that it had failed in its duty under Part 1 of FOISA.



8. The Council confirmed that its parking department had received Mr Ferguson's information request on 15 February 2012, and explained that this had been passed to its Land and Environmental Services (LES) FOI team on 8 March 2012. It understood there had been a misunderstanding between the teams, and the LES FOI team proceeded on the basis that the request was received by the Council on 8 March 2012. As a consequence, the LES FOI team miscalculated the 20 working day timescale for response as starting on 8 March 2012, rather than 15 February 2012.
9. The Council explained that the LES FOI team had written to Mr Ferguson on 3 April 2012, seeking clarification of his request, on the understanding that the 20 working day timescale had not yet elapsed. It also advised that it still required this clarification in order to deal with Mr Ferguson's request.
10. Mr Ferguson's requirement for review was, the Council advised, sent to its parking department and (due to an administrative oversight) not intimated to either the LES FOI team or the legal team. Consequently, the legal team (who would deal with requests for review) was unaware that Mr Ferguson had submitted a request for review and was therefore unable to respond to it.
11. The Council apologised for these oversights and failures to comply with the legislation. It also advised that steps had been taken to minimise the risk of such a failure recurring. It confirmed that the LES FOI team were aware that all requests for information should be backdated to the date of receipt by the Council.
12. Having obtained clarification from Mr Ferguson, the Council responded to Mr Ferguson's request for review during the investigation. Although Mr Ferguson was satisfied with the response, he continued to be dissatisfied with the time taken by the Council to respond to his information request and requirement for review.

Commissioner's analysis and findings

13. Subject to certain exceptions (see paragraph 15 below), 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. Section 1(3) of FOISA allows a Scottish public authority to seek clarification from a requester where it requires further information in order to identify and locate the requested information. The requester must be told that clarification is required and, provided this request is reasonable, the Scottish public authority is not obliged to provide the requested information until that clarification has been received.



15. No specific timescale is laid down for seeking clarification, but the Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 states (paragraph 1.5) that authorities should do this as soon as reasonably possible. Where clarification has been sought under section 1(3), the 20 working days referred to in paragraph 13 runs from the date on which the authority receives that clarification.
16. In this case, the 20 working days permitted to the authority in the absence of a request for clarification had passed by the time Mr Ferguson requested a review. He had received no request for clarification at this point: on the face of it, he would appear to have had no reason to believe that such clarification would be required. In the circumstances, the Commissioner finds that Mr Ferguson was entitled (in terms of section 20 of FOISA) to require the Council to review its failure to reach a decision in respect of his request.
17. Having received a valid requirement for review, the Council was obliged to respond to it. 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.
18. Since the Council did not provide a response to Mr Ferguson's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
19. Given that the Council has now responded to Mr Ferguson's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Ferguson's application.

DECISION

The Commissioner finds that Glasgow City 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 Ferguson, in particular by failing to respond to Mr Ferguson's requirement for review within the timescale laid down in section 21(1) of FOISA.

Given that a response was provided to Mr Ferguson's requirement for review during the investigation, the Commissioner does not require the Council to take any action in respect of this failure in response to Mr Ferguson's application.

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Mr John Ferguson
and Glasgow City Council



Appeal

Should either Mr Ferguson or Glasgow City 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
29 October 2012



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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

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.

...

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.



- (2) A requirement under subsection (1) is referred to in this Act as a "requirement for review".
- ...
- (5) Subject to subsection (6), a requirement for review must be made by not later than the fortieth working day after-
- (a) the expiry of the time allowed by or by virtue of section 10 for complying with the request; or
- ...
- (9) In subsection (1), the reference to "actions" and "decisions" includes inaction and failure to reach a decision.

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.
- ...