

Decision Notice



Decision 185/2012 Mr John McGregor and Stirling Council

Compliance with required timescales

Reference No: 201202007

Decision Date: 15 November 2012

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Rosemary Agnew

Scottish Information Commissioner

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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 information request made by Mr McGregor.

Background

1. On 23 July 2012, Mr McGregor wrote to the Council requesting certain specified information.
2. Having received no response, Mr McGregor wrote to the Council on 28 August 2012, requesting a review in respect of its failure to respond.
3. Mr McGregor did not receive a response to his requirement for review and, on 8 October 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.
4. The application was validated by establishing that Mr McGregor 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

5. On 10 October 2012, the Council was notified in writing that an application had been received from Mr McGregor and was invited to comment on the application.
6. The Council responded on 25 October 2012, acknowledging that it had failed in its duty under Part 1 of FOISA.
7. The Council confirmed that it had received Mr McGregor's information request on 23 July 2012 and explained that this was due to be responded to by 20 August 2012. The Council acknowledged that it was late in replying to Mr McGregor's request, and that a response was not issued until 16 October 2012 (i.e. following Mr McGregor's application to the Commissioner). The Council accepted that it was therefore in breach of section 10 of FOISA by not providing a response within time.



8. The Council also acknowledged that Mr McGregor's requirement for review was submitted on 28 August 2012 and was due to be responded to by 25 September 2012. The Council again accepted that it was late in replying to Mr McGregor's request for review, and that a response was not issued until 16 October 2012. The Council accepted that it was therefore in breach of section 21 of FOISA by not providing a response within time.
9. The Council explained that it had apologised to Mr McGregor for the delay in responding to both his request and requirement for review, and that the delays were caused by an increase in the number of FOI requests received in relation to roads maintenance, and the reviews following these requests.

Commissioner's analysis and findings

10. 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, subject to certain exceptions which are not relevant in this case.
11. Since the Council did not provide a response to Mr McGregor's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. 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.
13. Since the Council did not provide a response to Mr McGregor's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. Given that the Council has now responded to Mr McGregor's requirement for review and acknowledged its failures to comply earlier, the Commissioner does not require it to take any further action in this case.



DECISION

The Commissioner finds that Stirling Council (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 McGregor, in particular by failing to respond to Mr McGregor's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that a response has since been provided to Mr McGregor, the Commissioner does not require the Council to take any action in respect of these failures, in response to Mr McGregor's application.

Appeal

Should either Mr McGregor 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 notice.

Euan McCulloch
Deputy Head of Enforcement
15 November 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.

...

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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