

Decision Notice



Decision 193/2011 Mr James Milligan and Glasgow City Council

Failure to respond to request for review within the required timescale

Reference No: 201101465

Decision Date: 27 September 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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



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 information request made by Mr James Milligan.

Background

1. On 28 May 2011, Mr Milligan wrote to the Council, referring to correspondence in which the Council had claimed that a particular vehicle was observed waiting in a pay and display bay, as prescribed by the Traffic Signs Regulations and General Directions 2002 (the Regulations and Directions). Mr Milligan indicated that he was unable to locate within the Regulations and Directions any reference to a pay and display bay.
2. Mr Milligan asked the Council to provide him with the specifications of a pay and display bay as prescribed by the Regulations and Directions. He also asked the Council to provide the page numbers and the plate/figure number that refer to the specifications of the Pay and Display bay as prescribed by the Regulations and Directions, within the Regulations and Directions.
3. The Council wrote to Mr Milligan regarding this request on 23 June 2011. The Council commented that Mr Milligan had not provided it with enough information to allow it to trace the Penalty Charge Notice to which (the Council said) he referred. Mr Milligan was asked to provide the Council with details of the vehicle registration number and also the Penalty Charge Notice Number. The Council provided no information or other substantive response to Mr Milligan's request for information.
4. On 30 June 2011, Mr Milligan wrote to the Council requesting a review of its handling of his request. He noted that the Council had failed to provide the information requested, having claimed that he had not provided sufficient information. He reiterated that he wished to be provided with the information he had requested, as set out in paragraph 1 above.
5. Mr Milligan received no response to this request for review and wrote to the Commissioner's office on 5 August 2011, stating that he was dissatisfied with the Council's failure to respond to his request for review and provide him with the information requested, 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 Milligan 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 17 August 2011, the Council was notified in writing that an application had been received from Mr Milligan and was invited to comment on the application as required by section 49(3)(a) of FOISA.
8. In line with the Commissioner's investigation and enforcement procedures, the Council was asked to provide any comments within 2 weeks, by 31 August 2011. The letter to the Council also indicated that if no comments were received by that date, the Commissioner would assume that the Council did not wish to make any comment, and proceed to issue a decision finding that Glasgow City Council breached the requirements of Part 1 of FOISA based on the facts available to him.
9. No submissions were received from the Council by the 31 August, and the investigating officer contacted the Council to ensure that none had been sent but not received. At this point, the Council apologised for the delay, and indicated that it did wish to make submissions and asked to be given a further period to do so. It was agreed that the Council would be given until 22 September 2011 to provide its submissions to the Commissioner.
10. However, no submissions had been received by the Commissioner at the date of issuing this decision. In the circumstances, the Commissioner considers it unreasonable to delay further, and has made his decision based on the facts available to him as set out in Mr Milligan's application for decision.

Commissioner's analysis and findings

11. Section 21(1) of FOISA gives public authorities a maximum 20 working days following the date of receipt of the requirement to comply with the requirement for review, subject to exceptions which are not relevant to this case.
12. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it 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 has been reached.
13. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
 14. The Commissioner understands that Mr Milligan submitted his request for review on 30 June 2011, and has yet to receive any response. As noted above, the Council has provided no comments to inform the Commissioner's consideration of this case.
 15. The Commissioner finds that the Council failed to respond to Mr Milligan's requirement for review of 30 June 2011 in accordance with section 21 of FOISA, and in particular, sections 21(4) and 21(5) of FOISA within the 20 working days allowed by section 21(1) of FOISA.

DECISION

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

The Commissioner requires the Council to provide Mr Milligan with a response to his requirement for review by 11 November 2011.

Appeal

Should either Mr Milligan 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.

Claire Sigsworth
Deputy Head of Enforcement
27 September 2011



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

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.