

Decision Notice



Decision 221/2010 Mr Gavin Catto and Aberdeen City Council

Failure to respond to a request and request for review

Reference No: 201001913

Decision Date: 22 December 2010

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether Aberdeen 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 Gavin Catto (Mr Catto).

Background

1. On 3 May 2010, as part of an ongoing exchange of correspondence, Mr Catto wrote to the Council requesting information concerning a contract between the Council and a third party supplier concerning maintenance services including full details of the services provided and the terms and conditions contained in the contract. In his request Mr Catto clarified that as with previous correspondence regarding this matter, he had appointed his partner, Nicola Taylor (Ms Taylor), to deal with all related matters including all future matters relating to his request for information.
2. The Council wrote to Mr Catto on 1 June 2010 acknowledging receipt of his request for information. The person acknowledging the request indicated that he would endeavour to establish whether it was legally possible to disclose the requested information. On 14 June 2010, the Council write to Mr Catto again indicating that it had forwarded his request to the relevant section. In this letter the Council acknowledged that Mr Catto should have received a response by 31 May 2010 and apologised for the delay. It did not otherwise respond to his request.
3. On 28 June 2010, Ms Taylor wrote a lengthy letter to the Council including a request that it review its decision. In particular, Ms Taylor reminded the Council that to date it had not provided any substantive response to Mr Catto's request of 3 June 2010.
4. Ms Taylor did not receive a response to her request for review and on 5 October 2010 wrote to the Commissioner's Office, stating that she 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 Catto 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, via his agent Ms Taylor, to review its response to that request. The case was then allocated to an investigating officer.



Investigation

6. On 13 October 2010, the Council was notified in writing that an application had been received from Ms Taylor on behalf of Mr Catto and was invited to comment on the application as required by section 49(3)(a) of FOISA.
7. The Council responded on 27 October acknowledged that it had failed to comply with the requirements of FOISA. The Council stated that it had been involved in a lengthy exchange of correspondence with Mr Catto and Ms Taylor that spanned not only a lengthy period but also a restructuring of the relevant Directorate, staff and service delivery boundaries.
8. The Council identified a number of procedural errors and indicated that it intended to conduct a review into why both the original request and subsequent request for review were not responded to within the statutory timescales. It added that it would be in a position to send the information originally requested by Mr Catto to him within a few days.
9. Ms Taylor subsequently confirmed to the Commissioner that the Council provided the information requested on 28 October 2010.

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, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
11. The Council accepts that it did not provide a response to Mr Catto's information request of 3 May 2010 within that timescale.
12. The Commissioner therefore finds that the Council failed to respond to Mr Catto's request for information of 3 May 2010 within the 20 working days allowed under section 10(1) of FOISA.
13. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
14. 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 had been reached.
15. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA.
16. 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.
17. The Council accepts that it did not provide any response to Mr Catto's requirement for review of 28 June 2010, submitted on his behalf by Ms Taylor, within the timescale required by section 21(1).
18. The Commissioner therefore finds that the Council failed to respond to Mr Catto's requirement for review of 28 June 2010 in accordance with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA.
19. As the Council subsequently provided a response to Mr Catto dated 28 October 2010, containing the outcome of his request for review, the Commissioner does not require it to take any further action in relation to the matters subject of this decision notice.

DECISION

The Commissioner finds that Aberdeen 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 Gavin Catto, in particular by failing to respond to Mr Catto'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 the Council subsequently conducted a review and responded to Mr Catto, the Commissioner does not require it to take any action in response to these failures.



Appeal

Should either Mr Catto 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
22 December 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.

...

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

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.

...

- (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.

...