

Decision Notice



Decision 241/2013 Mr Roy Mackay and Highland Council

Failure to carry out a review

Reference No: 201302292

Decision Date: 29 October 2013

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Rosemary Agnew

Scottish Information Commissioner

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



Summary

This decision considers whether Highland 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 Roy Mackay.

Background

1. On 18 April 2013, Mr Mackay wrote to the Council requesting certain specified information.
2. The Council responded on 24 May 2013.
3. On 15 July 2013, Mr Mackay wrote to the Council requesting a review of its decision.
4. Mr Mackay did not receive a response to his requirement for review and, on 1 October 2013, 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 Mackay 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 10 October 2013, the Council was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.
7. The Council responded on 24 October 2013 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. The Council confirmed that it had received Mr Mackay's email requesting a review on 15 July 2013. After investigating, it had discovered that the email had been opened or marked as read, but the request had not been logged or followed up in any way. The Council was unable to offer any reason for this oversight, but offered its apologies.
9. 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.
10. Since the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
11. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with them. The Commissioner understands that a review is already underway.

DECISION

The Commissioner finds that Highland 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 Mackay, in particular by failing to respond to his requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner therefore requires the Council to carry out a review and to notify Mr Mackay of the outcome of the review by 13 December 2013.

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Appeal

Should either Mr Roy Mackay or Highland Council 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
29 October 2013



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.

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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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