

Decision Notice



Decision 255/2013 Mr Roy Mackay and Scottish Borders Council

Failure to respond to requirement for review

Reference No: 201302540

Decision Date: 14 November 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 Scottish Borders 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 Mackay.

Background

1. On 3 September 2013, Mr Mackay wrote to the Council requesting certain specified information.
2. The Council responded on 19 September 2013.
3. On 20 September 2013, Mr Mackay wrote to the Council requesting a review of its decision, which he clarified on 23 September 2013.
4. Mr Mackay did not receive a response to his requirement for review (except to indicate that the review was continuing) and, on 30 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 made a request for information to a Scottish public authority and 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 7 November 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. On 10 November 2013, Mr Mackay informed the Commissioner that he received the outcome of his requirement for review on 7 November 2013.
8. Having received this confirmation, the investigating officer informed the Council that submissions were no longer required.



Commissioner's analysis and findings

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 qualifications 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. Given that the Council has now responded to Mr Mackay's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Mackay's application.

DECISION

The Commissioner finds that Scottish Borders 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 Mr Mackay's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the Council has now responded to Mr Mackay's requirement for review, the Commissioner does not require the Council to take any action in respect of this failure, in response to Mr Mackay's application.

Appeal

Should either Mr Mackay or Scottish Borders 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.

Euan McCulloch
Deputy Head of Enforcement
14 November 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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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