

Decision Notice



Decision 143/2009 Mr William Stewart and North Lanarkshire Council

Failure to respond to request for review

Reference No: 200901655

Decision Date: 15 December 2009

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether North Lanarkshire Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to a requirement for review in relation to an information request made by Mr William Stewart.

Background

1. On 6 July 2009, Mr Stewart wrote to the Council with four information requests relating to the supply and replacement of a theatrical lighting dimmer system in Motherwell Concert Hall.
2. The Council responded on 24 July 2009. In response to one of Mr Stewart's requests, it advised that no drawings were issued for this tender. The Council stated that further information about the advertisement and evaluation of tenders could be found on its website, and provided the website page reference.
3. On 3 August 2009, Mr Stewart wrote to the Council requesting a review of its decision. In particular, Mr Stewart repeated his request for information about the tender process and expressed his dissatisfaction with what he saw as continued stalling on the part of the Council in providing information under FOISA.
4. Mr Stewart did not receive a response to his request for review and on 13 October 2009 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 Stewart 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 30 October 2009, the Council was notified in writing that an application had been received from Mr Stewart and was invited to comment on the application.



7. On 10 November 2009, the Council acknowledged that it had failed to respond to Mr Stewart's request for review, and advised that it now intended to carry out a review. The Council explained that Mr Stewart's request for review had been faxed to the Council with a significant volume of other documentation relating to a number of matters on which Mr Stewart was engaged in correspondence with the Council, and had unfortunately been overlooked.
8. On 17 November 2009, the Council issued its review response to Mr Stewart, which it copied to the Commissioner.
9. On 24 November 2009, Mr Stewart was asked whether he was satisfied with the review response sent by the Council. He was advised that if he was not satisfied, he should withdraw his existing application for a decision and submit a fresh application to the Commissioner, so that the Commissioner could consider and respond to the matters raised in the Council's review response.
10. This advice was repeated on more than one occasion to Mr Stewart; however, Mr Stewart did not choose to withdraw his existing application for a decision. The Commissioner is therefore required to make a decision in relation to Mr Stewart's application of 13 October 2009.

Commissioner's analysis and findings

Court of Session Opinion – requests for documents.

11. The Commissioner notes that the information requests from Mr Stewart included requests for copies of documents. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA provides a right to information, not documents. However, the Court said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
12. The Council's response to Mr Stewart's request for review noted the Court's finding that FOISA provides a right to access information rather than documents. It stated that there was no indication that the particular documents requested by Mr Stewart contained any further information beyond that already supplied in response to his request. The Council went on to conclude that that request for information had been fully addressed and the information sought provided in full.



13. The Commissioner notes that there is no indication in the correspondence he has seen between Mr Stewart and the Council that the Council questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Council has subsequently had with the Commissioner that the Council was unclear as to what the information request sought.
14. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.

Failure to comply with section 21(1) of FOISA

15. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a request for review, subject to certain exceptions which are not relevant in this case.
16. The Commissioner finds that, as it has acknowledged, the Council failed to comply with section 21(1) of FOISA when responding to Mr Stewart's request for review of 3 August 2009.
17. As the Council has now provided a response to his request for review, the Commissioner does not (in response to this particular application) require the Council to take any action in respect of the breach identified in this decision.
18. It remains open to Mr Stewart to make a fresh application for a decision from the Commissioner, as detailed in paragraph 9 above.

DECISION

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

Given that the Council has now responded to Mr Stewart's requirement for review, the Commissioner does not (in response to this particular application) require the Council to take any action in respect of the breach identified in this decision.



Appeal

Should either Mr Stewart 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
15 December 2009



Appendix

Relevant statutory provisions

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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