

Decision Notice



Decision 105/2011 Mr Michael Traill and Lothian Buses plc

Failure to respond within the required timescale

Reference No: 201100553 and 201100554
Decision Date: 27 May 2011

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

This decision considers whether Lothian Buses plc (Lothian Buses) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to two information requests made by Mr Michael Traill (Mr Traill).

Background

1. This decision considers two information requests made to Lothian Buses by Mr Traill. These are referred to as request 1 and request 2 in what follows.

Request 1

2. On 31 December 2010, Mr Traill asked Lothian Buses for the information about gifts and hospitality offered by Lothian Buses to others in 2010. He requested details of the gifts and hospitality, who they had been offered to, and any policy documents relating to the offering of gifts and hospitality.
3. Mr Traill received no response to his request and on, 15 February 2011, he wrote to Lothian Buses to request a review of its failure to respond to this request.
4. Lothian Buses acknowledged Mr Traill's request for review on the same day. It apologised for the tardiness of its response and undertook to provide a detailed response to Mr Traill by close of business that day. Lothian Buses also commented that it hoped by giving Mr Traill this commitment, he would set aside his request for a formal review.
5. Lothian Buses wrote to Mr Traill once again on 15 February 2011, providing its response to his request of 31 December 2011 (and making no reference to his subsequent request for review). It indicated that no gifts had been offered to any person in 2010, and provided details of occasions where hospitality had been offered. Lothian Buses advised Mr Traill that it did not hold any policy documents in relation to the offering of gifts and hospitalities.
6. On 26 March 2011, Mr Traill wrote to the Commissioner's office, stating that he was dissatisfied with Lothian Buses late response to request 1, and commenting that no review appeared to have taken place. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA, in relation to these technical matters only.



Request 2

7. On 19 January 2011, Mr Traill wrote to Lothian Buses requesting details of all complaints made to Lothian Buses from 1 July to 31 December 2011. He indicated that he wished to know how many complaints were made to Lothian Buses during that period and how many complaints were made under each recorded category.
8. Lothian Buses acknowledged receipt of Mr Traill's request on 20 January 2011.
9. Mr Traill received no response to his request and on, 21 February 2011, he wrote to Lothian Buses to request a review of its failure to respond to his request.
10. Lothian Buses wrote to Mr Traill on 22 February 2011, providing its response to his request of 19 January 2011 (and making no reference to his subsequent request for review). In this response, Lothian Buses provided information which it considered addressed Mr Traill's request in full.
11. On 26 March 2011, Mr Traill wrote to the Commissioner's Office, stating that he was dissatisfied with Lothian Buses late response to request 2, and commenting that no review appeared to have taken place. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA, in relation to these technical matters only.
12. Mr Traill's applications in relation to requests 1 and 2 were both validated by establishing that in each case, Mr Traill 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 cases were then allocated to an investigating officer. Given the similarity of the two cases, they have been conjoined for the purposes of this decision.

Investigation

13. On 13 April 2011, Lothian Buses was notified in writing in relation to each case that an application had been received from Mr Traill and it was invited to comment on each application as required by section 49(3)(a) of FOISA.
14. Lothian Buses responded in a letter dated 26 April 2011, which provided its comments in relation to both cases. Lothian Buses explained that it intended its letters of 15 February 2011 (in relation to request 1) and 22 February (in relation to request 2) to be responses to Mr Traill's two requests for information, not his requirements for review.
15. Lothian Buses explained that there were logistical reasons for the responses being supplied after timescale set out in section 10(1) of FOISA had passed. These related to absence of the key member of staff responsible issuing the response, and the availability of colleagues who could locate and provide the detailed information requested by Mr Traill.



16. Lothian Buses has apologised for its failure to meet the required timescales for responding to these requests. It explained that in an effort to avoid a repeat of these failings, it had assigned another member of staff to assist in its work on information requests. This action should, Lothian Buses submitted, ensure that in future, even if a mistake is made in the timing or processing of a response the other member of staff would be able to act as a “safety net”.

Commissioner’s analysis and findings

17. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with the request for information, subject to certain exceptions which are not relevant in this case.
18. Since Lothian Buses did not provide any response to Mr Traill’s two requests for information within 20 working days, the Commissioner finds that Lothian Buses failed to comply with section 10(1) of FOISA in relation to each request.
19. The Commissioner has noted Lothian Buses comments with respect to the causes of its failure to respond within the required timescale in these cases, and the steps it has taken to avoid similar breaches in future. He does not require any action to be taken in relation to these breaches in response to this decision.
20. 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 review, again subject to exceptions which are not relevant in this case.
21. 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.
22. 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.
23. 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.



24. Lothian Buses wrote to Mr Traill in relation to his two requests on 15 February and 22 February 2011 respectively. In both cases, it did so after receiving Mr Traill's request for review, and it provided a response to the respective requests where none had been supplied before.
25. Considered in the light of the provisions set out above, the Commissioner's view is that these two letters constituted notices in terms of section 21(5) of FOISA, which provided the outcome of a review which produced the outcome required by section 21(4)(c) of FOISA.
26. Notwithstanding Mr Traill's comments that Lothian Buses did not appear to have conducted a review (and Lothian Buses' comments which suggested that it had not intended its letters of 15 and 22 February to give notice of the outcome of any reviews), the Commissioner is therefore satisfied that, by providing these responses, Lothian Buses had indeed taken steps which constituted a review in compliance with section 21(4) and (5) of FOISA.
27. Given that these letters were issued within the timescale required by section 21(1) of FOISA, the Commissioner finds that Lothian Buses did respond to Mr Traill's two requirements for review in accordance with section 21 of FOISA. It complied with Part 1 of FOISA by doing so.

DECISION

The Commissioner finds that Lothian Buses plc failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the two information requests made by Mr Traill which are considered in this decision. In particular he finds that Lothian Buses failed in relation to each of Mr Traill's requests to provide a response within the timescale laid down by section 10(1) of FOISA. The Commissioner does not require Lothian Buses plc to take any action in respect of these breaches.

However, since Lothian Buses plc provided appropriate responses to Mr Traill's two requirements for review within the required timescale, he finds in each case that Lothian Buses acted in accordance with Part 1 and section 21 of FOISA.

Decision 105/2011
Mr Michael Traill
and Lothian Buses Plc



Appeal

Should either Mr Traill or Lothian Buses plc 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 May 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.

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

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.