

Decision Notice



Decision 052/2009 Mr Gordon and Highland Council

Failure to respond to requirement for review within the required timescale

Reference No: 200900468
Decision Date: 06 May 2009

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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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 Gordon.

Background

1. On 25 August 2008, Mr Gordon wrote to the Council requesting the following information:
“..all the reports that the Highland Council have on the case with regards [named individuals] as they were care workers for [a relative] at [a specified address] “.
2. The Council responded on 8 September 2009, giving notice in terms of section 17(1) of FOISA that some information was not held and indicating that information held in relation to the remainder of the request was exempt from release as it constituted the personal information of certain individuals.
3. On 30 September 2008, Mr Gordon wrote to the Council requesting a review of its decision. In particular, Mr Gordon was dissatisfied that information had been withheld from him given that the matter had already been heard in Court.
4. Mr Gordon did not receive a response to his request for review and on 19 February 2009 he 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 Gordon 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 18 March 2009, the Council was notified in writing that an application had been received from Mr Gordon and was invited to comment on the application as required by section 49(3)(a) of FOISA, no later than 2 April 2009.



7. The Council failed to respond within the timescale and the investigating officer contacted the Council on 3 April 2009 regarding the lack of response. The Council indicated it was aware of the Commissioner's letter and apologised for missing the deadline, indicating that its response would be sent that day. The Council responded on the 3 April 2009, citing various points in mitigation but also confirming that it had failed to respond to Mr Gordon within the required timescale and apologising for this failure. Within the letter, the Council undertook to complete its consideration of Mr Gordon's request, although it did not indicate precisely when he could expect a response.
8. The investigating officer emailed the Council on 3 April 2009 asking it to inform the Commissioner (no later than 14 April 2009) when a review decision would be issued. The Council responded on the 14 April 2009 advising that a review response would be issued to Mr Gordon no later than 24 April 2009 and a copy would then be provided to the investigating officer.
9. On 22 April 2009, a review decision letter was issued to Mr Gordon by the Council, indicating it was withholding the information requested under a number of exemptions in FOISA. A copy was sent to the investigating officer.

Commissioner's analysis and findings

10. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
11. The Commissioner finds that the Council failed to respond to Mr Gordon's requirement for review of 30 September 2008 within the 20 working days allowed under section 21(1) of FOISA.
12. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.
13. The Commissioner notes that the Council has now issued a decision letter to Mr. Gordon.

DECISION

The Commissioner finds that Highland 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 Gordon, in particular by failing to respond to Mr Gordon's requirement for review within the timescale laid down in section 21(1) of FOISA. Given that the Council has now issued a review decision letter, the Commissioner does not require the Council to take any action in response to this particular application in relation to this failure.



Appeal

Should either Mr Gordon or Highland 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.

Euan McCulloch
Deputy Head of Enforcement
06 May 2009



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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