

Decision Notice



Decision 047/2012 Mr Dominic Ward and Falkirk Community Trust

Failure to comply with required timescales or carry out review

Reference No: 201200288

Decision Date: 14 March 2012

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Margaret Keyse

Acting Scottish Information
Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS



Summary

This decision considers whether Falkirk Community Trust (the Trust) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Ward.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 22 November 2011, Mr Ward wrote to the Trust (which is a Scottish public authority for the purposes of FOISA by virtue of being a publicly owned company as defined in section 6 of FOISA) requesting certain specified information.
2. Mr Ward received no response to his request for information.
3. On 4 January 2012, Mr Ward wrote to the Trust requesting a review in respect of its failure to respond.
4. Mr Ward did not receive a response to his requirement for review and, on 8 February 2012, wrote to the Commissioner, 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 Ward 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 failure to respond to that request. The case was then allocated to an investigating officer.



Investigation

6. On 22 February 2012, the Trust was notified in writing that an application had been received from Mr Ward and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Trust responded on 6 March 2012, acknowledging that it had failed in its duty under Part 1 of FOISA in that it had not provided Mr Ward with a response to his request within the appropriate timeframe, or carried out a review. The Trust explained that the request had been mistakenly taken as a continuation of an ongoing dialogue in connection with other correspondence.
8. The Trust apologised for its tardiness in dealing with Mr Ward's request for information, but confirmed that a review had been carried out and a response had been provided to Mr Ward on 6 March 2012. Mr Ward confirmed receipt of the review response.

Commissioner's analysis and findings

9. 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 a request for information, subject to certain exceptions which are not relevant in this case.
10. Since the Trust did not provide a response to Mr Ward's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
11. 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 to this case.
12. Since the Trust did not provide a response to Mr Ward's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. Given that the Trust has now provided Mr Ward with a response to his requirement for review, the Commissioner does not require the Trust to take any action in this case.



DECISION

The Commissioner finds that Falkirk Community Trust (the Trust) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Ward, in particular by failing to respond to Mr Ward's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. She does not require the Trust to take any action in respect of these failures in response to Mr Ward's application.

Appeal

Should either Mr Ward or Falkirk Community Trust 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
14 March 2012**



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.
- ...