

Decision Notice



Decision 110/2010 Calibre Recruitment and Scottish Water

Failure to respond to a request for review

Reference No: 201001037
Decision Date: 28 June 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether Scottish Water complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Calibre Recruitment.

Background

1. On 16 February 2010, Calibre Recruitment emailed Scottish Water requesting the following information:
 - Scottish Water board minutes from April 2009
 - Scottish Water Horizons board minutes since inception
2. Scottish Water responded on 9 March 2010. It advised Calibre Recruitment that the Scottish Water board minutes from May 2009 were now available on its website, whilst the Scottish Water Horizons board minutes would be printed and forwarded on.
3. As Calibre Recruitment did not receive a copy of the Scottish Water Horizons board minutes, it emailed Scottish Water on 15 April 2010 requesting a review on the basis that it had failed to provide these minutes.
4. Calibre Recruitment did not receive a response to its request for review.
5. On 20 May 2010 Calibre Recruitment wrote to the Commissioner stating that it was dissatisfied with Scottish Water's failure to respond to its request for review and applying for a decision in terms of section 47(1) of FOISA.
6. Calibre Recruitment's application was validated by establishing that it had made a request to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its failure to provide a response to that request.
7. The case was then allocated to an investigating officer.



Investigation

8. On 1 June 2010, Scottish Water was notified in writing that an application had been received from Calibre Recruitment and was invited to comment on the application as required by section 49(3)(a) of FOISA. Scottish Water was also provided with a copy of Calibre Recruitment's application.
9. On 9 June, Scottish Water emailed the investigating officer. It explained that a review had not been conducted in this case because it had received a significant number of requests for information from another applicant, which Scottish Water believed to be acting in concert with Calibre Recruitment. It stated that the huge number of requests received from these two applicants was such that it was not possible to coordinate the work and issue responses in the required time limit.
10. Scottish Water explained that it had consequently judged the request from Calibre Recruitment to be vexatious in terms of section 14(1), and that it intended to respond to Calibre Recruitment's request for review in those terms.
11. Scottish Water subsequently issued a response to Calibre Recruitment's request for review on 11 June 2010.

Commissioner's analysis and findings

12. 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 a review.
13. 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 had been reached
14. 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.
15. Section 21(8), however, provides that a public authority is not obliged to comply with a requirement for review in cases where the requirement itself is vexatious, or where the request is one with which, the authority is not required to comply, because it is vexatious by virtue of section 14(1).
16. Where an authority judges that section 21(8) is applicable, section 21(9) states that it must give the applicant notice of this within the 20 working day period allowed by section 21(1).



17. In this case, Scottish Water neither provided notice of the outcome of a review, nor advised Calibre Recruitment that it had determined that it was not obliged to conduct a review within the required timescale.
18. The Commissioner therefore finds that Scottish Water failed to act in accordance with section 21 of FOISA, and, in particular by failing to either conduct a review and provide notice of its outcome in terms of section 21(4) and (5) of FOISA, or to provide notice to Calibre Recruitment in line with section 21(9), within the timescale specified in section 21(1).
19. As Scottish Water has now notified Calibre Recruitment of the outcome of its review in respect of the request, the Commissioner does not require Scottish Water to take any further action in respect of this technical breach

DECISION

The Commissioner finds that Scottish Water failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Calibre Recruitment, in particular by failing to respond to Calibre Recruitment's request for review within the timescales laid down in sections 21(1), (5) and (9) of FOISA.

As Scottish Water subsequently provided notice in terms of section 21(5) in response to Calibre Recruitment's request for review, the Commissioner does not require Scottish Water to take any further action in respect of this technical breach in response to this decision.

Appeal

Should either Calibre Recruitment or Scottish Water 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
28 June 2010



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.

...

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

....

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 modification 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.

...



- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.