

Decision Notice



Decision 253/2013 Tim Spencer and Highland Council

Failure to respond to requirement for review

Reference No: 201302492

Decision Date: 14 November 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



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 an information request made by Mr Spencer.

Background

1. On 14 August 2013, Mr Spencer wrote to the Council requesting certain specified information.
2. The Council responded on 9 September 2013, withholding information under certain exemptions in FOISA.
3. On 10 September 2013, Mr Spencer wrote to the Council requesting a review of its decision.
4. Mr Spencer did not receive a response to his requirement for review and, on 18 October 2013, 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 Spencer made a request for information to a Scottish public authority and 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 28 October 2013, the Council was notified in writing that an application had been received from Mr Spencer and was invited to comment on the application.
7. The Council responded on 11 November 2013 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. The Council confirmed that it had received Mr Spencer's requirement for review. It explained that it had not recognised as such initially, as it was part of a complicated series of correspondence. It acknowledged that timescales had not been adhered to and procedures had not been followed.
9. The Council informed the Commissioner that a response was being prepared and offered its apologies.
10. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain qualifications which are not relevant in this case.
11. Whatever other correspondence the Council may have received from Mr Spencer, it should have been entirely clear from his email of 10 September 2013 that he was seeking a review, and which information request that requirement for review related to. Since the Council did not provide a response to Mr Spencer's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

DECISION

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

The Commissioner therefore requires the Council to carry out a review, in accordance with section 21 of FOISA, and to notify Mr Spencer of the outcome by **30 December 2013**.

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Appeal

Should either Mr Spencer or Highland Council wish to appeal against this decision, they have the right to 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.

Euan McCulloch
Deputy Head of Enforcement
14 November 2013



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.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.



- (7) Regulations under subsection (6) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (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.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.