

Decision Notice



Decision 154/2010 Mr Andrew Sharp and West Lothian Council

Failure to comply with required timescales or carry out review

Reference No: 201001438

Decision Date: 03 September 2010

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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 West Lothian 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 Sharp.

Background

1. Mr Sharp had been in correspondence with the Council regarding various matters, and on 27 April 2010 sent an email to the Council which included the following request for information:
Can you detail how many junkets, foreign and within the UK, Linkston [the Council's Chief Executive] has been on in the last 10 years and detail all his travel, expenses claims and any other costs he has taken from the public purse.
2. On 9 June 2010, Mr Sharp sent a further email to the Council requesting a review of his request of 27 April 2010, on the basis that no response had been received.
3. The Council responded to Mr Sharp's request for information by email on 11 June 2010. It referred him to responses to previous requests for information and also provided him with details of expenses held from 1998 to 2010. The Council further explained that it did not hold further information relating to travel, expenses claims and any other costs, other than that already provided to him, because it had no business need to do so.
4. Mr Sharp responded to the Council's email of 11 June later the same day, indicating that his request had been in relation to foreign trips and not general expenses. The Council referred Mr Sharp again to the information it had supplied previously and reiterated that it held no further information.
5. Mr Sharp did not receive any further communication from the Council and on 31 July 2010 wrote to the Commissioner's Office, stating that he was dissatisfied with its failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Sharp 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

7. On 17 August 2010, the Council was notified in writing that an application had been received from Mr Sharp and invited to comment on the application, as required by section 49(3)(a) of FOISA. The Council responded on 31 August 2010, indicating that a review had been carried out and that a response had been provided to Mr Sharp (which also apologised for failing to respond to the request within the time allowed).
8. Mr Sharp confirmed that he had received the Council's response of 31 August 2010, while also advising that he still required a decision from the Commissioner.

Commissioner's analysis and findings

9. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
10. Given that the Council did not respond to Mr Sharp's request of 27 April 2010 until 11 June 2010, the Commissioner finds that the Council failed to respond to Mr Sharp's request for information within the 20 working days allowed by section 10(1) of FOISA.
11. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
12. It is presumed from the Council's communications on this matter that it had not considered Mr Sharp's requirement for review of 9 June 2010 when it responded to his information request on 11 June 2010. None of its communications with Mr Sharp prior to his application to the Commissioner are indicative of a review having been carried out, whether in response to the requirement of 9 June 2010 or his further communication of 11 June 2010, and this appears to be borne out by the Council's comments to the investigating officer. Consequently, the Commissioner finds that the Council failed to comply with section 21 of FOISA in response to Mr Sharp's requirement for review.
13. In response to the Commissioner's request for comments, the Council stated that it had carried out a review and that a response had been provided to Mr Sharp. The Commissioner is satisfied that the outcome of that review satisfies the requirements of section 21 of FOISA, in particular subsections (4) and (5). Consequently, the Commissioner does not require the Council to take any action in response to Mr Sharp's application.



DECISION

The Commissioner finds that West Lothian Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Mr Sharp's request for information within the timescales laid down by section 10(1) of FOISA and by failing to comply with Mr Sharp's requirement for review as required by section 21 of FOISA. As the Council has now responded to Mr Sharp's requirement for review, he does not require it to take any action in response to Mr Sharp's application.

Appeal

Should either Mr Sharp or West Lothian 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
03 September 2010



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.
- ...
- (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.

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