

Decision Notice



Decision 028/2011 Ms Maria Chapman and the City of Edinburgh Council

Failure to respond to requirement for review

Reference No: 201100125

Decision Date: 14 February 2011

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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Summary

This decision considers whether the City of Edinburgh Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Chapman.

Background

1. On 27 October 2010, Ms Chapman wrote to the Council requesting certain correspondence between the Council and Viewpoint Housing Association.
2. The Council responded on 10 November 2011 by giving Ms Chapman notice that it did not hold the information she had requested.
3. On 3 December 2010, Ms Chapman wrote to the Council requesting a review of its decision. She drew the Council's attention to information which led her to believe there must be correspondence held by the Council of the kind she described in her request.
4. The Council acknowledged receipt of Ms Chapman's request for review by email on 6 December 2010.
5. Ms Chapman did not receive any further response to her request for review and on 19 January 2011 wrote to the Commissioner's Office, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Ms Chapman 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 26 January 2011, the Council was notified in writing that an application had been received from Ms Chapman and was invited to comment on the application, as required by section 49(3)(a) of FOISA.



8. The Council responded on 3 February 2011, confirming that it had received and logged Ms Chapman's request for review and acknowledging that due to an administrative error it had failed to carry out a review. It indicated that it would conduct a review and issue the outcome within the next twenty working days.

Commissioner's analysis and findings

9. Section 21(1) of FOISA gives a Scottish public authority a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
10. Section 21(4) sets out what an authority might do when it conducts a review. The authority can:
 - i) confirm its original decision, with or without modification;
 - ii) substitute a different decision for that originally made, or
 - iii) reach a decision, where the applicant's complaint is that none has been made.
11. Section 21(5) of FOISA then requires the authority to notify the applicant of what it has done under section 21(4), and issue a statement of its reasons for so doing, within the time allowed by section 21(1).
12. In this case, the Commissioner finds that the Council failed to carry out a review in response to Ms Chapman's requirement for review, as required by section 21 of FOISA (and in particular subsections (4) and (5)), within the 20 working days allowed by section 21(1).
13. The Commissioner has considered the Council's comments on this case and notes that it intends to conduct a review and notify the applicant of the outcome within twenty working days of the date of its submission to the Commissioner. The Commissioner requires the Council to do this, implementing any actions required as a consequence of its review decision, by 31 March 2011.



DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) failed to comply with Ms Chapman's requirement for review as required by section 21 of FOISA. In so doing, the Council breached the requirements of Part 1 of FOISA.

The Commissioner therefore requires the Council to comply with the requirement for review, in accordance with all relevant requirements of section 21 of FOISA, by 31 March 2011.

Appeal

Should either Ms Chapman or the City of Edinburgh 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
14 February 2011



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.

...

- (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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