

Decision Notice

Decision 133/2014 Dr Linda Dunbar and Scottish Borders Council

Complaints against school departments: failure to respond within statutory timescales

Reference No: 201401164

Decision Date: 17 June 2014



Scottish Information
Commissioner

Summary

On 19 February 2014, Dr Dunbar asked Scottish Borders Council (the Council) for information concerning complaints made against school departments in each of the previous five years. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Dr Dunbar's requirement for review within the timescale set down by FOISA. The Commissioner has ordered the Council to comply with the requirement for review.

Background

| Date | Action |
|------------------|--|
| 19 February 2014 | Dr Dunbar made an information request to the Council. |
| | The Council did not respond to the information request. |
| 21 April 2014 | Dr Dunbar emailed the Council requiring a review of its failure to respond. |
| | Dr Dunbar did not receive a response to her requirement for review. |
| 28 May 2014 | Dr Dunbar wrote to the Commissioner, stating that she was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 3 June 2014 | The Council was notified in writing that an application had been received from Dr Dunbar and was invited to comment on the application. |
| 16 June 2014 | The Commissioner received submissions from the Council. These submissions are considered below. |

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Dr Dunbar's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the Council did not provide a response to Dr Dunbar's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. 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 section 21.

6. The Council acknowledged that there had been failings in the way that it dealt with Dr Dunbar's request. The Council explained that it had initially failed to log Dr Dunbar's information request. After it had received Dr Dunbar's requirement for review, there had been a further delay in collating accurate information from the relevant department within the Council. The Council apologised for the errors and delays in dealing with Dr Dunbar's request.
7. The Council stated that it anticipated being able to respond to Dr Dunbar's requirement for review once it had identified accurate information which addressed the terms of her request.
8. The Council explained that it had recently experienced resourcing problems in dealing with information requests. It had assigned additional resources to deal with its current caseload and a review of procedures was underway.

Decision

The Commissioner finds that Scottish Borders Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Dunbar. In particular, the Council failed to respond to Dr Dunbar's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Dr Dunbar's requirement for review by 1 August 2014.

Appeal

Should either Dr Dunbar or Scottish Borders 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.

Enforcement

If Scottish Borders Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Scottish Borders Council has failed to comply. The Court has the right to inquire into the matter and may deal with Scottish Borders Council as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement
17 June 2014

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