

Decision Notice

Decision 180/2017: Mr Brian Gourlay and West Dunbartonshire Council

Report and Communications: failure to respond within statutory timescales

Reference No: 201701597

Decision Date: 20 October 2017



Scottish Information
Commissioner

Summary

West Dunbartonshire Council (the Council) was asked for information about a specific report and other communications. 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 Mr Gourlay's requirement for review within the timescale set down by FOISA.

Background

Date	Action
8 May 2017	Mr Gourlay made an information request to the Council.
	The Council did not respond to the information request.
26 July 2017	Mr Gourlay wrote to the Council, requiring a review in respect of its failure to respond.
	Mr Gourlay did not receive a response to his requirement for review.
7 September 2017	Mr Gourlay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
3 October 2017	The Council was notified in writing that an application had been received from Mr Gourlay and was invited to comment on the application.
17 October 2017	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, the Council acknowledged that, while it had been in correspondence with Mr Gourlay, it had not responded to Mr Gourlay's request or requirement for review.
2. The Council notified the Commissioner that it had issued a response to Mr Gourlay's request for information on 17 October 2017. Mr Gourlay confirmed that he had received the response from the Council.
3. 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.
4. It is a matter of fact that the Council did not provide a response to Mr Gourlay's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

5. 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.
6. It is a matter of fact that the Council did not provide a response to Mr Gourlay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. The Council responded to Mr Gourlay's requirement for review on 17 October 2017, so the Commissioner does not require it to take any further action in relation to Mr Gourlay's application.

Decision

The Commissioner finds that West Dunbartonshire 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 Mr Gourlay. In particular, the Council failed to respond to Mr Gourlay's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Gourlay's application, given that a review has now been carried out and the outcome communicated to Mr Gourlay.

Appeal

Should either Mr Gourlay or West Dunbartonshire 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

20 October 2017

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