

Decision Notice



Decision 127/2011 Mr M S Strachan and East Dunbartonshire Council

Compliance with timescales and requirement for review

Reference No: 201100821

Decision Date: 29 June 2011

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Kevin Dunion

Scottish Information Commissioner

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



Summary

This decision considers whether East Dunbartonshire 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 Strachan.

Background

1. On 12 January 2011, Mr Strachan wrote to the Council requesting information relating to a proposed compulsory purchase order to relieve congestion in Hunter Road, Milngavie.
2. The Council acknowledged receipt of Mr Strachan's request by automated email on 12 January 2011.
3. On 29 March 2011, Mr Strachan wrote to the Council requesting a review on the grounds that it had not responded to his information request.
4. Mr Strachan did not receive a response to his requirement for review and on 29 April 2011 wrote to the Commissioner, 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 Strachan 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

6. On 23 May 2011, the Council was notified in writing that an application had been received from Mr Strachan and was invited to comment on the application.
7. The Council responded on 13 June 2011, acknowledging its failure to respond to Mr Strachan's request. It also indicated it was now carrying out a review, which it expected to complete shortly. The Council issued a response to Mr Strachan's request for review, which also extended an apology to him, on 28 June 2011.



Commissioner's analysis and findings

8. 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, subject to certain exceptions which are not relevant in this case.
9. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant to this case.
10. In the circumstances, the Commissioner concludes that the Council failed to deal with Mr Strachan's request for information or his requirement for review within the respective periods of 20 working days specified by sections 10(1) and 21(1) of FOISA.
11. However, as Mr Strachan has now received a response to his requirement for review, the Commissioner does not require the Council to take any further action in this case in relation to these failures.

DECISION

The Commissioner finds that 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 Strachan, in particular by failing to respond to Mr Strachan's request for information or his requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Council has now provided a response to Mr Strachan's requirement for review, the Commissioner does not require the Council to take any action in respect of these failures in response to Mr Strachan's application.

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Mr M S Strachan
and East Dunbartonshire Council



Appeal

Should either Mr Strachan or East Dunbartonshire 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
29 June 2011



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.

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