

Decision Notice

Decision 053/2016: W & R Logan Ltd and the Scottish Agricultural Wages Board

Staff guidelines on applying regulations for calculating agricultural wages:

Failure to respond within statutory timescales

Reference No: 201600261
Decision Date: 04 March 2016



Scottish Information
Commissioner

Summary

On 9 June 2015, W & R Logan Ltd (WRL) asked the Scottish Agricultural Wages Board (SAWB) for any guidelines that SAWB staff use on how to apply regulations relating to the calculation of agricultural wages. This decision finds that SAWB failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that SAWB failed to comply with WRL's requirement for review within the timescale set down by FOISA.

Background

Date	Action
9 June 2015	WRL made an information request to SWAB
7 July 2015	WRL received a response, but it did not address or answer the specified information request.
4 August 2015	WRL wrote to SAWB requiring a review of its failure to respond.
	WRL did not receive a response to their requirement for review.
15 October 2015	WRL made a further requirement for review, regarding the lack of a response to the earlier one made on 4 August 2015.
16 October 2015	Although WRL received an acknowledgement, SAWB did not respond to the requirement for review.
10 February 2016	WRL wrote to the Commissioner's Office, stating that they were dissatisfied with WRL's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
16 February 2016	SAWB was notified in writing that an application had been received from WRL and was invited to comment on the application.
1 March 2016	The Commissioner received submissions from SAWB. 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 SAWB did not provide a response to WRL'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 SAWB did not provide a response to WRL's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. SAWB explained that it had not responded to the request because it had not been recognised as a freedom of information request when it was received. SAWB explained that it was not aware that an information request had been made, until the applicant made reference to FOISA in their requirement for review dated 4 August 2015.
6. SAWB submitted that a further reason why the request had not been processed in accordance with FOISA was because the applicant had stated in the requirement for review (4 August 2015) that they had located the requested information.
7. SAWB accepted that clarification could have been sought from the applicant if there had been any question about the request. SAWB acknowledged that the request had not been handled correctly.
8. SAWB responded to WRL's requirement for review on 29 February 2016, and apologised for the delays in responding to its request. The Commissioner does not require it to take any further action in relation to WRL's application.

Decision

The Commissioner finds that Scottish Agricultural Wages Board (SAWB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by W & R Logan Ltd (WRL). In particular, SAWB failed to respond to WRL's request for information and its requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require SAWB to take any action in respect of these failures, in response to WRL's application, given that a response has now been issued.

Appeal

Should either W & R Logan Ltd or Scottish Agricultural Wages Board 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.

Alison Davies
Deputy Head of Enforcement

04 March 2016

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