

Decision Notice



Decision 125/2013 Mr Roy Mackay and Scottish Borders Council

Failure to respond to a request and requirement for review

Reference No: 201301084
Decision Date: 28 June 2013

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Rosemary Agnew
Scottish Information Commissioner

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



Summary

This decision considers whether Scottish Borders 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 Mackay on 26 February 2013.

Background

1. On 26 February 2013, Mr Mackay emailed the Council requesting certain specified information.
2. Mr Mackay received no response to his request.
3. On 1 April 2013, Mr Mackay emailed the Council, requesting a review in respect of their failure to respond.
4. Mr Mackay did not receive a response to his requirement for review and, on 6 May 2013, emailed the Commissioner's Office, 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 Mackay 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 10 June 2013, the Council was notified in writing that an application had been received from Mr Mackay and it was invited to comment on the application.
7. The Council responded on 25 June 2013. On 27 June 2013, the Council provided the Commissioner with a copy of its response to Mr Mackay's requirement for review was issued on 26 June 2013.



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. Since the Council did not provide a response to Mr Mackay's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
10. 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, subject to certain exceptions which are not relevant in this case.
11. Since the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. Given that the Council has now responded to Mr Mackay's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Mackay's application.

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), by failing to respond to Mr Mackay's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

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



Appeal

Should either Mr Mackay or Scottish Borders 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.

Alison Davies
Deputy Head of Enforcement
28 June 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

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.

...