

Decision Notice

Decision 108/2016: Ibenatextilwerke GMBH and Scottish Fire and Rescue Service

Tender for structural fire kit and associated personal protective equipment:

Failure to respond within statutory timescales

Reference No: 201600669

Decision Date: 09 May 2016



Summary

On 25 January 2016, Burness Paul LLP on behalf of Ibenä Textilwerke GMBH (referred to in this decision as Ibenä) asked the Scottish Fire and Rescue Service (the SFRS), c/o Clyde and Co Solicitors, for information about the procurement process relating to the tender for structural fire kit and associated personal protective equipment. This decision finds that the SFRS 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 SFRS failed to comply with Ibenä's requirement for review within the timescale set down by FOISA.

Background

Date	Action
25 January 2016	Ibenä made an information request to the SFRS.
25 February 2016	The SFRS responded to the information request.
4 March 2016	Ibenä wrote to the SFRS, requiring a review of its decision.
	Ibenä did not receive a response to its requirement for review.
14 April 2016	Ibenä wrote to the Commissioner's Office, stating that it was dissatisfied with the SFRS's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
20 April 2016	The SFRS was notified in writing that an application had been received from Ibenä and was invited to comment on the application.
4 May 2016	The Commissioner received submissions from the SFRS. 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 SFRS did not provide a response to Ibenä'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 SFRS did not provide a response to Ibenä'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 SFRS explained that it had commissioned the services of an external solicitor to handle all correspondence with Burness Paull LLP (acting on behalf of Ibená). It acknowledged that the request and requirement for review had not been responded to in accordance with the SFRS' policies and procedures.
6. The SFRS explained it had taken steps to improve practice in this area, in particular making all individuals involved aware of SFRS policy for dealing with information requests. Additional training would be provided, to help prevent a re-occurrence. The Commissioner welcomes the steps taken (and being taken) by the SFRS.
7. Burness Paull LLP confirmed that the SFRS responded to the requirement for review on 20 April 2016 and provided the Commissioner with a copy of it.
8. As a response has now been issued, the Commissioner does not require the SFRS to take any further action in relation to Ibená's application.

Decision

The Commissioner finds that the Scottish Fire and Rescue Service (the SFRS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made on behalf of Ibená Textilwerke GMBH (Ibená). In particular, the SFRS failed to respond to Ibená'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 SFRS to take any action in respect of these failures, in response to Ibená's application, given that a response has been issued.

Appeal

Should either Ibená Textilwerke GMBH or the Scottish Fire and Rescue Service 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

09 May 2016

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