

Decision Notice

Decision 147/2016: Ibenatextilwerke GMBH and the Scottish Fire and Rescue Service

Revised tender for structural fire kit & associated personal protective equipment:

Failure to respond within statutory timescales

Reference No: 201600976

Decision Date: 05 July 2016



Scottish Information
Commissioner

Summary

On 15 March 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 specific aspects of the revised 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.

The Commissioner has ordered the SFRS to comply with the requirement for review.

Background

Date	Action
15 March 2016	Ibenä made an information request to the SFRS.
	The SFRS did not respond to the information request.
15 April 2016	Ibenä wrote to the SFRS, requiring a review of its failure to respond.
	Ibenä did not receive a response to its requirement for review.
19 May 2016	Ibenä wrote to the Commissioner's Office, stating that it was dissatisfied with SFRS's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 June 2016	SFRS was notified in writing that an application had been received from Ibenä and was invited to comment on the application.
27 June 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 Ibena'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 (as it has in a previous decision concerning the same applicant (108/2016)) that it had commissioned the services of an external solicitor to handle all correspondence with Burness Paull LLP (acting on behalf of Ibena). This is understandable in the circumstances, but it is for any Scottish public authority to ensure (in such circumstances) that its legal representatives are fully aware of its processes for handling information requests.
6. The SFRS acknowledged that the request and requirement for review had not been responded to in accordance with its policies and procedures, explaining it had not been aware of these requests until contact had been made by the Commissioner's office. The SFRS confirmed that its Information Governance Team was now dealing with all relevant correspondence: the Commissioner would ask the SFRS (and any other Scottish public authority, in a similar position) to ensure that it maintains suitably robust arrangements to allow any correspondence received in such circumstances to be responded to fully in accordance with FOISA (and/or, where appropriate, the Environmental Information (Scotland) Regulations 2004).
7. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the SFRS failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

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 Ibena Textilwerke GMBH (Ibena). In particular, the SFRS failed to respond to Ibena's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the SFRS to provide Ibena with a response to its requirement for review, by **Friday 19 August 2016**.

Appeal

Should either Ibena 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.

Enforcement

If the Scottish Fire and Rescue Service (the SFRS) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SFRS has failed to comply. The Court has the right to inquire into the matter and may deal with the SFRS as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

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