

Decision Notice

Decision 226/2016: Melvich Primary School Parent Council and Highland Council

Recruitment of Head Teachers: failure to respond within statutory timescales

Reference No: 201601754

Decision Date: 24 October 2016



Scottish Information
Commissioner

Summary

On 6 July 2016, Melvich Primary School Parent Council (MPSPC) asked Highland Council (the Council) for information about the recruitment of head teachers to Melvich Primary School over the last ten years. This decision finds that the Council failed to comply with MPSPC's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

Date	Action
6 July 2016	MPSPC made an information request to the Council.
2 August 2016	The Council responded to the information request.
19 August 2016	MPSPC wrote to the Council requiring a review of its decision.
	MPSPC did not receive a response to their requirement for review.
23 September 2016	MPSPC wrote to the Commissioner's Office, stating that they were dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5 October 2016	The Council was notified in writing that an application had been received from MPSPC and was invited to comment on the application.
19 October 2016	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to MPSPC's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
3. The Council confirmed that it had received MPSPC's requirement for review and accepted that it had not provided a response to it. It confirmed that it will now discuss the review with the relevant staff with the intention of sending a response to MPSPC.
4. 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 Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

5. The Commissioner notes that the Council has apologised to her for its failure to comply, but recommends that it should consider whether it would also be appropriate to apologise to MPSPC.

Decision

The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Melvich Primary School Parent Council (MPSPC). In particular, the Council failed to respond to MPSPC's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide a response to MPSPC's requirement for review, by **8 December 2016**.

Appeal

Should either Melvich Primary School Parent Council or Highland Council 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 Highland Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

24 October 2016

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