

Decision Notice

Decision 023/2017: Mr James Clarke and Renfrewshire Council

Minutes of a meeting: failure to respond within statutory timescales

Reference No: 201700080

Decision Date: 21 February 2017



Scottish Information
Commissioner

Summary

Renfrewshire Council (the Council) was asked for the minutes of a specific meeting. This decision finds that the Council failed to respond to the request and the request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
3 October 2016	Mr Clarke made an information request to the Council.
	The Council did not respond to the information request.
1 December 2016	Mr Clarke wrote to the Council requiring a review of its decision in respect of its failure to respond.
	Mr Clarke did not receive a response to his requirement for review.
16 January 2017	Mr Clarke wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
30 January 2017	The Council was notified in writing that an application had been received from Mr Clarke and was invited to comment on the application.
10 February 2017	The Commissioner received submissions from the Council. 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 Council did not provide a response to Mr Clarke'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 Mr Clarke did not receive the Council's response to his requirement for review within 20 working days, so the Commissioner finds that the Council failed to comply with section 21(1) of FOISA.
5. The Council responded to Mr Clarke's requirement for review on 14 February 2017, so the Commissioner does not require any further action in relation to Mr Clarke's application.

6. The Council explained that the minutes requested by Mr Clarke would normally have been provided to him on a “business as usual” basis, rather than under FOISA or subject access rights under the Data Protection Act 1998 (the DPA).
7. The Council explained that it holds no record of Mr Clarke’s initial request, but that it did receive his request for review dated 1 December 2016. The Council noted that minutes, such as those requested by Mr Clarke, would normally be posted by recorded delivery, with a covering letter for audit trail purposes. However, in this instance, the minutes were posted by standard delivery with only a compliments slip and as such, the Council holds no documentary evidence that the minutes were provided to Mr Clarke (although a member of staff recalls posting them).
8. The Council confirmed that it would re-issue the minutes to Mr Clarke. The Council explained that there was no deliberate attempt to withhold information from Mr Clarke, but that a failure to follow its established FOI procedures had led to the delay in providing him with the information he had requested. The Council apologised for this failure.
9. The Commissioner is satisfied that the Council’s failure to respond timeously to Mr Clarke in this instance was a result of human error and that its FOI procedures, if followed, would have ensured a proper response to Mr Clarke. The Commissioner notes the Council’s assurance that the staff member involved will be offered training to improve their knowledge of FOI procedures, and that all Council staff will be reminded of the importance of handling information requests properly and timeously, and of the procedure to follow if an applicant indicates that they are unhappy with the response (or non-response).

Decision

The Commissioner finds that Renfrewshire 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 Mr Clarke. In particular, the Council failed to respond to Mr Clarke’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 Council to take any further action in respect of these failures, in response to Mr Clarke’s application, given that a review response has been provided.

Appeal

Should either Mr Clarke or Renfrewshire 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.

Alison Davies
Deputy Head of Enforcement

21 February 2017

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