

Decision Notice 006/2020

Dissolution of the Falconer Trust: failure to respond

Applicant: The Applicant

Authority: Moray Council

Case Ref: 201902275



Scottish Information
Commissioner

Summary

On 24 August 2019, the Applicants asked Moray Council (the Council) for information about the dissolution of the Falconer Trust. This decision finds that the Council 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 Council failed to comply with the Applicants' requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
24 August 2019	The Applicants made an information request to the Council.
	The Council did not respond to the information request.
26 September 2019	The Applicants wrote to the Council, seeking a review in respect of its failure to respond.
	The Applicants did not receive a response to their requirement for review.
19 December 2019	The Applicants wrote to the Commissioner's Office, stating that they were dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
19 December 2019	The Council was notified in writing that an application had been received from the Applicants and was invited to comment on the application.
10 January 2019	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 the Applicants' 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 Council did not provide a response to the Applicants' requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. 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: he now requires a review to be carried out in accordance with section 21.
6. In its submissions to the Commissioner, the Council advised that, in this case, the correct procedures for dealing with Freedom of Information requests had not been followed, resulting in the request and requirement for review being overlooked. It confirmed that the staff involved had been reminded of the correct procedure and was confident that this was an isolated incident.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicants for its failure to comply.

Decision

The Commissioner finds that Moray 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 the Applicants. In particular, the Council failed to respond to the Applicants' 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 Council to carry out a review and issue a review outcome, by **2 March 2020**.

Appeal

Should either the Applicants or the 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 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.

Euan McCulloch
Deputy Head of Enforcement

16 January 2020

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