

Decision Notice



Decision 158/2008 Mr Michael Peterson and Shetland Islands Council

Failure to respond to a request for information and requirements for review
within the required timescales

Reference No: 200801465, 200801469
Decision Date: 15 December 2008

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether Shetland Islands Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information requests made by Mr Peterson.

The Council failed to respond to Mr Peterson's information request in one instance and his requests for review in respect of this and another request for information. Following an investigation, the Commissioner found that the Council had failed to comply with the relevant timescales specified in sections 10(1) and 21(1) of FOISA.

Background

1. On 1 April 2008, Mr Peterson wrote to the Council requesting a number of items of information.
2. The Council responded on 2 May 2008. The Council provided Mr Peterson with some information, offered inspection of other information within Council offices and also stated that some of the information he had requested was not held.
3. On 26 June 2008, Mr Peterson wrote to the Council seeking a review of its decision. In particular, Mr Peterson requested that he be given access to the information offered for inspection in a neutral venue. Within his request for review, Mr Peterson also made new requests for information.
4. The Council acknowledged Mr Peterson's letter of 26 June 2008 on 1 July 2008.
5. Mr Peterson wrote to the Council on 27 August 2008. He asked the Council to review its deemed refusal not to provide him with the information requested in his letter of 26 June, on the basis that the Council had not responded within the timeframe set out in FOISA.
6. Mr Peterson did not receive a response to his requests for review of 26 June 2008 or 27 August 2008 and on 4 October 2008 wrote to the Commissioner's Office, stating that he was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Peterson had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



Investigation

8. On 14 October 2008, the Council was notified in writing that an application had been received from Mr Peterson and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
9. The Council responded on 7 November 2008, citing various points in mitigation but also confirming that it had failed to respond to Mr Peterson within the required timescales and apologising for these failures. Within this letter, the Council undertook to write to Mr Peterson the following week with a full explanation of the delays alongside an invitation for him to meet with the Council to discuss his outstanding requests.
10. During the course of the investigation, following discussions with the investigating officer, the Council provided Mr Peterson with a response to his requests on 28 November 2008. A copy of this response was provided to the investigating officer.

Commissioner's analysis and findings

11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
12. The Commissioner finds that the Council failed to respond to Mr Peterson's requests for information of 26 June 2008 within the 20 working days allowed by section 10(1) of FOISA.
13. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exemptions which are not relevant in this case.
14. The Commissioner also finds that the Council failed to respond to Mr Peterson's requirements for review of 26 June 2008 and 27 August 2008 within the 20 working days allowed under section 21(1) of FOISA.
15. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.
16. The Commissioner notes that the Council has now written to Mr Peterson in response to his requests and has apologised to Mr Peterson.



DECISION

The Commissioner finds that Shetland Islands Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Peterson, in particular by failing to respond to Mr Peterson's request for information and requirements for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Council has now responded to the requirements for review, the Commissioner does not require any further action in response to this particular application in relation to these failures.

Appeal

Should either Mr Peterson or Shetland Islands Council wish to appeal against this decision, there is an 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 notice.

Euan McCulloch
Deputy Head of Investigations
15 December 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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