

Decision Notice



Decision 036/2010 Mr T and the Chief Constable of Dumfries and Galloway
Constabulary

Failures to recognise and respond to information request and requirement for
review

Reference No: 201000180
Decision Date: 05 March 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether the Chief Constable of Dumfries and Galloway Constabulary (Dumfries and Galloway Constabulary) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr T.

Background

1. On 12 December 2009, Mr T wrote to Dumfries and Galloway Constabulary requesting certain information.
2. Dumfries and Galloway Constabulary responded on 23 December 2009 advising that the information could not be provided at that time, making certain assumptions as to why he was seeking the information and providing certain explanations as a consequence.
3. On 1 January 2010, Mr T wrote to Dumfries and Galloway Constabulary requesting a review of its decision. In particular, he reminded Dumfries and Galloway Constabulary that he had requested the information under FOISA.
4. Dumfries and Galloway Constabulary then replied to Mr T on 14 January 2010, without conducting a review under FOISA. Applying the same assumptions as in their initial response to him, they provided a further explanation and advised him to direct his request to another public authority.
5. On 26 January 2010 Mr T wrote to the Commissioner's Office, stating that he was dissatisfied with the way in Dumfries and Galloway Constabulary had dealt with his information request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr T had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

7. On 10 February 2010, Dumfries and Galloway Constabulary were notified in writing that an application had been received from Mr T and invited to comment on that application.
8. Dumfries and Galloway Constabulary responded on 25 February 2010, confirming that they had received Mr T's request and his request for review. They acknowledged that Mr T had not been accorded his rights under FOISA and that the officers dealing with his request had not recognised the relevance of FOISA in doing so. Dumfries and Galloway Constabulary also advised that appropriate advice and training had since been provided to the officers in question and relevant units within the force.
9. Dumfries and Galloway Constabulary further advised that, following the involvement of their own FOI Officer, a response in terms of FOISA had been sent to Mr T on 1 February 2010. The investigating officer confirmed that Mr T had received this response. He remained dissatisfied with the manner in which his information request and his request for review had been handled.

Commissioner's analysis and findings

Initial handling of request

10. Dumfries and Galloway's initial response to Mr T of 23 December 2009, while appearing to acknowledge that they hold relevant information and refusing to release it to him, fails to recognise that he has made a request for information falling within the terms of section 1(1) of FOISA. Clearly, it was such a request: Mr T wrote to Dumfries and Galloway Constabulary, providing his name and address and describing the information he was seeking, and therefore met all the requirements for an information request set out in section 8(1) of FOISA. This failure, which the Commissioner considers to be a breach of section 1(1) of FOISA, was acknowledged by Dumfries and Galloway Constabulary in their response to the investigating officer.

Mr T's requirement for review

11. Section 21 of FOISA is set out in full in the Appendix. Section 21(1) gives a Scottish public authority a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.

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Galloway Constabulary



12. Section 21(4) sets out what an authority might do when it conducts a review. The authority can - i) confirm its original decision, with or without modification, ii) substitute a different decision from that originally made, or iii) reach a decision where the applicant's complaint is that none has been made.
13. Section 21(5) then requires the authority to notify the applicant of what it has done under section 21(4), and a statement of its reasons for so doing, within the time allowed by section 21(1). This notice must also detail the applicant's right to apply to the Commissioner under section 47(1) of FOISA, and to appeal to the Court of Session under section 56 (section 21(10)).
14. As with his initial request, the Commissioner is satisfied that Mr T made a valid request for review to Dumfries and Galloway Constabulary. He wrote to them on 1 January 2010, providing his name and address and referring to the earlier correspondence in respect of his information request. In this letter, he reiterated his belief that he was entitled to the information he had requested and asked Dumfries and Galloway Constabulary to review its decision not to release that information. Therefore, he met all of the requirements set out in section 20 of FOISA for a valid requirement for review. At this point, Dumfries and Galloway Constabulary could have addressed its earlier failure in respect of Mr T's request and carried out a review meeting the requirements of section 21 of FOISA. It is clear from their letter of 14 January 2010, however, that they failed to do so and in consequence failed to comply with section 21.
15. In their submissions, Dumfries and Galloway Constabulary accepted that they had failed to undertake a review when asked to do so by Mr T. The Commissioner notes Dumfries and Galloway Constabulary's explanation of the steps they have since taken to address their failures in this case.
16. The Commissioner also notes the response sent to Mr T by Dumfries and Galloway Constabulary on 1 February 2010. In the circumstances, while noting with concern the failures identified in this case, the Commissioner does not require any action to be taken in relation to these particular breaches in response to Mr T's application. However, the breaches will be noted and may be taken into account in determining whether any future action should be taken in respect of Dumfries and Galloway Constabulary under the Commissioner's Enforcement Strategy.



DECISION

The Commissioner finds that Chief Constable of Dumfries and Galloway Constabulary (Dumfries and Galloway Constabulary) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr T, in particular by failing to respond to Mr T's request for information and requirement for review as required by sections 1(1) and 21 of FOISA respectively.

Given the steps taken by Dumfries and Galloway Constabulary since Mr T's application to him, the Commissioner does not require them to take any action in response to these failures in response to this particular application.

Appeal

Should either Mr T or the Chief Constable of Dumfries and Galloway Constabulary 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 Enforcement
05 March 2010



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
 - (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.

...

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- (2) A requirement under subsection (1) is referred to in this Act as a "requirement for review".
- (3) A requirement for review must-
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);



- (b) state the name of the applicant and an address for correspondence; and
- (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).
- (4) For the purposes of paragraph (a) of subsection (3) (and without prejudice to the generality of that paragraph), a requirement for review is treated as made in writing where the text of the requirement is as mentioned in paragraphs (a) to (c) of section 8(2).
- (5) Subject to subsection (6), a requirement for review must be made by not later than the fortieth working day after-
 - (a) the expiry of the time allowed by or by virtue of section 10 for complying with the request; or
 - (b) in a case where the authority purports under this Act-
 - (i) to comply with a request for information; or
 - (ii) to give the applicant a fees notice, a refusal notice or a notice under section 17(1) that information is not held,but does so outwith that time, the receipt by the applicant of the information provided or, as the case may be, the notice.
- (6) A Scottish public authority may comply with a requirement for review made after the expiry of the time allowed by subsection (5) for making such a requirement if it considers it appropriate to do so.

...

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.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and



- (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,
- subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on the requirement.
- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
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- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
- (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.