

Decision Notice



Decision 159/2010 CaL Solutions (Billingham) Ltd and Scottish Water

Failure to respond to request and request for review

Reference No: 201001505

Decision Date: 13 September 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether Scottish Water complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by CaL Solutions (Billingham) Ltd (CaL).

Background

1. On 11 March 2010, CaL emailed Scottish Water requesting all financial information for this current year to date, and all back-up information.
2. Scottish Water failed to respond within 20 working days.
3. On 8 June 2010, CaL emailed to Scottish Water reiterating its request for information. This email enclosed the original request and two reminders that had been sent on 22 and 24 March 2010. The Commissioner is satisfied that the email of 8 June 2010 constitutes a valid request for review in terms of section 20 of FOISA.
4. CaL did not receive a response to its request for review.
5. CaL wrote to the Commissioner's Office on 20 July 2010, stating that it was dissatisfied with these failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that CaL 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 11 August 2010, Scottish Water was notified in writing that an application had been received from CaL and was invited to comment on the application. Copies of the application, request, and request for review were enclosed, and Scottish Water was asked in particular to comment on its apparent failure to respond to these within the timescales set out in FOISA.



8. Scottish Water responded by email on 19 August 2010. It explained that it had not responded within the statutory timescales because of multiple requests for information received from the same applicant.
9. Scottish Water argued that the impact on its operations of the number of requests (which it advised was approximately 100) and the amount of information processing and staff involved meant that it was not possible for Scottish Water to co-ordinate the work and issue a response within the time limit.
10. Scottish Water advised that it had accordingly decided to consider the applicant's requests as vexatious in terms of section 14(1) of FOISA. It pointed out that it had written to CaL Solutions on 31 May 2010 in response to all outstanding requests for review, pointing out that in the letter an apology was given to the applicant in respect of the failure to respond with the statutory timescales, along with advising the applicant of Scottish Water's decision that the applicant's requests were considered vexatious and that a review would not be carried out where one was pending.

Commissioner's analysis and findings

11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
12. Scottish Water did not provide a response to CaL's request of 11 March 2010.
13. The Commissioner therefore finds that Scottish Water failed to respond to CaL's request for information of 11 March 2010 within the 20 working days allowed under section 10(1) of FOISA.
14. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review.
15. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it 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.
16. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA.



17. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
18. Section 21(8), however, provides that a public authority is not obliged to comply with a requirement for review in cases where the requirement itself is vexatious, or where the request is one with which, the authority is not required to comply, because it is vexatious by virtue of section 14(1).
19. Where an authority judges that section 21(8) is applicable, section 21(9) states that it must give the applicant notice of this within the 20 working day period allowed by section 21(1).
20. The Commissioner has noted the terms of Scottish Water's letter to CaL dated 31 May 2010. However, he notes that this was issued in response to any requests for review that were outstanding at that time. Since the request for review under consideration was not sent to Scottish Water until 8 June 2010, the letter of 31 May 2010 cannot be taken as a response to that request for review. Issuing this letter did not remove the obligation for Scottish Water to either conduct a review in response to subsequent requests, or to give notice that a review would not be conducted on the grounds that the request was considered to be vexatious.
21. In this case, therefore, Scottish Water has neither provided notice of the outcome of a review, nor advised CaL that it had determined that it was not obliged to conduct a review within the required timescale.
22. The Commissioner therefore finds that Scottish Water failed to act in accordance with section 21 of FOISA, and, in particular by failing to either conduct a review and provide notice of its outcome in terms of section 21(4) and (5) of FOISA, or to provide notice to CaL in line with section 21(9), within the timescale specified in section 21(1).
23. The Commissioner now requires Scottish Water to either conduct a review and provide notice of its outcome in terms of section 21(4) and (5) of FOISA, or to provide notice to CaL in line with section 21(9) that it has determined that it is not obliged to conduct a review by virtue of section 21(8).



DECISION

The Commissioner finds that Scottish Water failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by CaL Solutions (Billingham) Limited (CaL), in particular by failing to respond to CaL's request for information and request for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires Scottish Water to either:

(a) conduct a review in relation to CaL's request (which should be in terms of section 21(4)(c) of FOISA) and notify CaL of the outcome of the review in terms of section 21(5), or

(b) give notice in terms of section 21(9) that it has determined (in line with section 21(8) that it is not required to conduct a review .

Scottish Water should do so by 28 October 2010.

Appeal

Should either CaL or Scottish Water 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.

Claire Sigsworth
Deputy Head of Enforcement
13 September 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.

...

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

...

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

....

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.

...

- (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 modification 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.
- ...
- (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.