

Decision Notice



Decision 122/2011 Fairmilehead Community Council and City of Edinburgh Council

Failure to respond to requirement for review

Reference No: 201100469
Decision Date: 20 June 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether the City of Edinburgh Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Fairmilehead Community Council (FCC).

Background

1. On 3 October 2010, FCC wrote to the Council requesting certain information relating to the Papal visit to Edinburgh in September 2010.
2. The Council responded on 29 October 2010. In its response, the Council advised FCC that the information was considered exempt from disclosure in terms of section 27(1) of FOISA (Information intended for future publication) on the basis that the Council intended publishing the information in a report to its Policy and Strategy Committee in November 2010.
3. On 24 November 2010, FCC emailed the Council requesting a review of its decision. FCC considered that the specific information it had requested was not contained within the published report.
4. FCC did not receive a response to its requirement for review and, on 24 January 2011, wrote to the Commissioner, stating that it was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. Following correspondence with the Commissioner, the Council subsequently issued a response to FCC's requirement for review on 10 March 2011. The Council explained that it no longer wished to rely on the exemption in section 27(1) of FOISA and instead gave notice in terms of section 17(1) of FOISA that it did not hold the information requested by FCC at the time it received the request. Following receipt of the Council's response to its requirement for review, FCC withdrew its application for a decision from the Commissioner.
6. However, FCC remained dissatisfied with the Council's response to its requirement for review and, on 14 March 2011, wrote to the Commissioner, stating that it was dissatisfied with the Council's substantive response to its requirement for review and remained dissatisfied with the Council's failure to respond to its requirement for review within the timescale prescribed in FOISA and again applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



7. The application was validated by establishing that FCC 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

8. On 13 April 2011, the Council was notified in writing that an application had been received from FCC and was invited to comment on the application.
9. The Council responded on 3 May 2011, confirming that, in relation to its failure to respond to FCC's requirement for review within the timescales laid down in FOISA, it had no further comment to make beyond that already supplied to the Commissioner in relation to FCC's previous application for a decision. In earlier correspondence, the Council had explained that, as a result of an administrative error, the Council had not responded to FCC's requirement for review. The Council also made submissions to the Commissioner regarding its substantive response to FCC's requirement for review of 10 March 2011.
10. Following correspondence with the investigating officer, FCC withdrew its application for a decision from the Commissioner regarding the Council's substantive response to its requirement for review. However, FCC indicated that it still wished the Commissioner to issue a decision regarding the Council's failure to respond to its requirement for review within the timescale prescribed in FOISA.

Commissioner's analysis and findings

11. Section 21(1) of FOISA 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.
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 for that originally made, or
 - iii) reach a decision, where the applicant's complaint is that none has been made.
13. Section 21(5) of FOISA then requires the authority to notify the applicant of what it has done under section 21(4), and issue a statement of its reasons for so doing, within the time allowed by section 21(1).

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14. In this case, the Commissioner finds that the Council failed to carry out a review in response to FCC's requirement for review, as required by section 21 of FOISA (and in particular subsections (4) and (5)), within the 20 working days allowed by section 21(1).
15. However, as FCC has now received a response to its requirement for review, the Commissioner does not require the Council to take any further action in relation to its failure to comply with the timescale in section 21(1) of FOISA.

DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) failed to comply with Fairmilehead Community Council's requirement for review as required by section 21 of FOISA. In so doing, the Council breached the requirements of Part 1 of FOISA. The Commissioner does not require the Council to take any action in relation to this breach in response to this decision.

Appeal

Should either FCC or the 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.

Margaret Keyse
Head of Enforcement
20 June 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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 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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