

Decision Notice



Decision 001/2013 Mr Jim Reyner and Shetland Islands Council

Failure to respond to requests and review requirements

Reference No: 201202327

Decision Date: 16 January 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



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 Reyner.

Background

1. Mr Reyner made three separate email information requests to the Council for certain specified information, on 31 July, 9 September and 24 September 2012.
2. The Council did not respond to his requests for information.
3. On 2 September, 22 October and 23 October 2012, Mr Reyner emailed the Council requesting reviews in respect of its failures to respond to his respective requests.
4. Mr Reyner did not receive responses to his requirements for review of 22 and 23 October 2012 and on 11 November 2012 wrote to the Commissioner, stating that he was dissatisfied with these failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Reyner 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.

Investigation

6. On 12 December 2012, the Council was notified in writing that an application had been received from Mr Reyner and was invited to comment on the application.
7. At the time of writing this decision the Council has not responded to the request for comments.



Commissioner's analysis and findings

8. 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, subject to certain exceptions which are not relevant in this case.
9. Since the Council did not provide responses to any of Mr Reyner's three requests for information within 20 working days, the Commissioner finds that, in each case, it failed to comply with section 10(1) of FOISA.
10. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement for review to comply with the requirement, subject to certain exceptions which are not relevant in this case.
11. Since the Council did not provide responses to Mr Reyner's requirements for review of 22 and 23 October 2012 within 20 working days, the Commissioner finds that, in each case, it failed to comply with section 21(1) of FOISA.
12. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no reviews have been carried out in these cases, the Commissioner finds that the Council failed to discharge these requirements and she now requires reviews to be carried out in accordance with section 21 of FOISA.

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 Reyner, in particular by failing to respond to Mr Reyner's requests for information and requirements for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the Council to respond to Mr Reyner's requirements for review, in accordance with the requirements of section 21 of FOISA, by 4 March 2013.

Decision 001/2013
Mr Jim Reyner
and Shetland Islands Council



Appeal

Should either Mr Reyner or Shetlands 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 Enforcement
16 January 2013



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

...

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.

...