

Decision Notice



Decision 140/2013 DITT Construction Ltd and Shetland Islands Council

Failure to respond to requirement for review

Reference No: 201301352
Decision Date: 15 July 2013

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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 request made by DITT Construction Ltd (DITT).

Background

1. On 20 February 2013, DITT wrote to the Council requesting certain specified information.
2. The Council responded on 22 March 2013.
3. On 3 April 2013, DITT wrote to the Council requesting a review of its decision.
4. DITT did not receive a response to their requirement for review and on 3 June 2013 wrote to the Commissioner's Office, stating that they were dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that DITT 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

6. On 18 June 2013, the Council was notified in writing that an application had been received from DITT and was invited to comment on the application.
7. The Council confirmed that it had received the letter from the Commissioner, but did not provide submissions in response to the letter.



Commissioner's analysis and findings

8. Section 21(1) of FOISA gives Scottish public authorities 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.
9. Since the Council did not provide a response to DITT's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
10. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

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 request made by DITT Construction Ltd., in particular by failing to respond to DITT's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner therefore requires the Council to provide DITT with a review response within 45 calendar days after the date of intimation of this decision notice, that is by 30 August 2013.

Appeal

Should either DITT 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.

Margaret Keyse
Head of Enforcement
15 July 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.

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.

...

- (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.