

Decision Notice



Decision 239/2013 Mr Roy Mackay and Comhairle nan Eilean Siar

Failure to respond or carry out a review

Reference No: 201302291

Decision Date: 29 October 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

This decision considers whether Comhairle nan Eilean Siar (the Comhairle) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr Roy Mackay.

Background

1. On 18 April 2013, Mr Mackay wrote to the Comhairle requesting certain specified information.
2. The Comhairle failed to respond to his request within 20 working days and, on 15 July 2013, Mr Mackay wrote to the Comhairle again, requesting a review in respect of its failure to respond.
3. Mr Mackay did not receive a response to his requirement for review and, on 1 October 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Mr Mackay 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

5. On 10 October 2013, the Comhairle was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.
6. The Comhairle responded on 23 October 2013 and its submissions are considered in the Commissioner's analysis and findings below.
7. The Comhairle provided Mr Mackay with a review response on 23 October 2013.



Commissioner's analysis and findings

8. The Comhairle confirmed that it had received both Mr Mackay's request and request for review. Both had been acknowledged, but no response had been issued. The Comhairle stated that this was a result of a breakdown in the administration process for responding to requests for information. The information had been requested from the relevant departments within the Comhairle but, due to a lack of co-ordination, the information was not finalised.
9. The Comhairle commented that the case appeared to have highlighted a potential vulnerability within its system for dealing with information requests, where a request required input from two departments. The Comhairle stated that it would address this issue.
10. 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.
11. Since the Comhairle did not provide a response to Mr Mackay's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. 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.
13. Since the Comhairle did not provide a response to Mr Mackay's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. Given that the Comhairle has now responded to Mr Mackay's requirement for review, the Commissioner does not require it to take any further action in this case.

DECISION

The Commissioner finds that Comhairle nan Eilean Siar (the Comhairle) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Mackay, in particular by failing to respond to his request and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Comhairle has now responded to Mr Mackay's requirement for review, the Commissioner does not require it to take any further action.



Appeal

Should either Mr Roy Mackay or Comhairle nan Eilean Siar wish to appeal against this decision, they have the right to 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
29 October 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.

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