

Decision Notice

Decision 221/2014: Allan Milligan and Glasgow City Council

Reports relating to a damaged vehicle: Failure to respond within statutory timescales

Reference No: 201402267

Decision Date: 14 October 2014



Scottish Information
Commissioner

Summary

On 17 March 2014, Mr Milligan asked Glasgow City Council (the Council) for reports relating to an impounded vehicle. This decision finds that the Council failed to comply with Mr Milligan's information request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
17 March 2014	Mr Milligan made an information request to the Council.
	The Council did not respond to the information request.
14 May 2014	Mr Milligan wrote to the Council, requiring a review in respect of its failure to respond.
	Mr Milligan did not receive a response to his requirement for review.
15 September 2014	Mr Milligan wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
22 September 2014	The Council was notified in writing that an application had been received from Mr Milligan and was invited to comment on the application.
6 and 7 October 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

Information Request

1. 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. This is subject to qualifications, including the provisions of section 16(5) of FOISA.
2. Section 16(5) relates to requests to which a Scottish public authority claims section 14 of FOISA applies. In other words, the authority must consider the request to be vexatious or repeated. In such cases, the authority is not obliged to give the applicant notice to the effect that section 14 applies, provided:
 - a. It has given the applicant notice to that effect, in relation to a previous identical or substantially similar request, and

- b. It would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.
3. In this decision, the Commissioner need not decide whether the request under consideration is vexatious. She is concerned only with whether the Council complied with the technical requirements of FOISA in dealing with it. The first question is whether, in this case, the Council was entitled not to give Mr Milligan notice that it considered section 14 to apply.
 4. The Council did not cite section 16(5) specifically in its submissions to the Commissioner. However, the application of that provision is crucial to the Council's handling of this request. Unless the two tests set out in paragraph 2 above could be met in this case, the Council was obliged (even if it considered section 14 to apply) to respond to the request.
 5. Firstly, therefore, the Commissioner must consider whether the Council gave Mr Milligan notice that section 14 of FOISA had been judged to apply, in relation to a previous identical or substantially similar request.
 6. The Council submitted that it would be unreasonably burdensome for it to be required to respond to the request, on the basis that it considered the request to be vexatious for the purposes of section 14(1). It referred to *Decision 235/2011* (involving the same parties), in which the Commissioner accepted that a previous request from Mr Milligan was vexatious and could be responded to under section 14(1).
 7. The Council provided copies of other correspondence from Mr Milligan and his family, ranging from 26 March 2014 to 3 October 2014. It submitted that this was evidence that the volume and frequency of correspondence had not reduced since 2011, nor had the nature and content changed.
 8. As stated above, it is not the Commissioner's role in this case to consider whether Mr Milligan's request of 17 March 2014 was vexatious. It may have been, but the question is whether the Council's (acknowledged) failure to respond to that request was appropriate in the circumstances.
 9. The Council appears to believe that the 2014 and 2011 requests should be considered substantially similar, although it does not state this specifically or explain why this should be the case. On the basis of the submissions and supporting information she has received, the Commissioner cannot accept that this would be a valid approach.
 10. The two requests are separated by approximately three years. Even if they were more closely related in subject matter, the Commissioner would expect some explanation of why the information and the circumstances could not be said to have changed in the interim. But, in this case, she cannot accept that they are sufficiently related in subject matter for it to be reasonable to characterise them as substantially similar.
 11. The Council has not explained why they should be regarded as substantially similar. They are both about parking enforcement, but on any reasonable interpretation that is where the similarity ends. In the requests which led to *Decision 235/2011*, Mr Milligan was asking about actions taken directly in response to particular instances of alleged unauthorised parking. In the current request, insofar as it is the subject of an application to the Commissioner, he asks about a vehicle taken to the car pound on a subsequent occasion.
 12. If the Commissioner were to accept the current request as substantially similar to the previous one identified by the Council, this would have the effect of placing a substantial proportion of the Council's functions in relation to parking within the ambit of section 16(5).

As stated in *Decision 130/2014 Mr Christopher Quinn and the Assessor for Lanarkshire Valuation Joint Board*, she does not believe this to have been the intention underlying section 16(5). In all the circumstances, the Commissioner does not believe the request of 17 March 2014 can properly be found to be substantially similar to a previous request made by Mr Milligan. Having reached that conclusion, she does not need to consider whether it would have been unreasonable to expect the Council to serve a further notice in relation to the current request.

13. Therefore, the Commissioner concludes that section 16(5) did not remove the obligation for the Council to issue a response if it considered the 17 March 2014 request to be vexatious in terms of section 14(1) of FOISA.
14. As the Council was obliged to respond to Mr Milligan's request and did not do so within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.

Requirement for review

15. 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. This is subject to qualifications which are not relevant in this case.
16. The Council informed the Commissioner that it had not received Mr Milligan's requirement for review, and therefore did not have the opportunity to respond to him. However, its submissions suggest that (given the application of section 14(1) of FOISA to the request) it should not be required to do so.
17. Firstly, the Commissioner must come to a conclusion, on the balance of probabilities, as to whether the letter of 14 May 2014 (the requirement for review) was in fact received by the Council. The Commissioner has taken account of the volume of correspondence received from the Milligans, all sent to the same address, which the Council acknowledges it is difficult to keep track of. In the circumstances, she considers, on balance, it likely that it was received and (perhaps understandably) missed.
18. Having received the requirement for review, however, the Council was obliged to respond to it. As explained in *Decision 130/2014* (see above), section 21 of FOISA contains no equivalent of section 16(5). It is a matter of fact, therefore, that the Council did not provide a response to Mr Milligan's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
19. 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 section 21. This may, if the Council considers it appropriate, be a response in terms of section 21(8) and (9).
20. If the Council believes section 14(1) applies to this request, then a notice should be served to Mr Milligan in terms of 21(8).

Decision

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Milligan. In particular, the Council failed to respond to Mr Milligan's request and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to respond to Mr Milligan's requirement for review, in accordance with section 21 of FOISA, by **28 November 2014**.

Appeal

Should either Mr Milligan or Glasgow City Council 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.

Enforcement

If Glasgow City Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

14 October 2014

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