

Decision Notice

Decision 225/2014:

Ross Dougal Fish Merchants Ltd and Scottish Borders Council

Inspection Reports for specified Eyemouth businesses:

Failure to respond within statutory timescales

Reference No: 201402310

Decision Date: 24 October 2014



Scottish Information
Commissioner

Summary

On 7 May 2014, Ross Dougal Fish Merchants Ltd. asked Scottish Borders Council (the Council) for inspection reports for specified Eyemouth businesses. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Ross Dougal Fish Merchants Ltd.'s requirement for review within the timescale set down by FOISA.

Background

Date	Action
7 May 2014	Ross Dougal Fish Merchants Ltd. made an information request to the Council.
	The Council did not respond to the information request.
23 June 2014	Ross Dougal Fish Merchants Ltd. wrote to the Council requiring a review in respect of its failure to respond.
	Ross Dougal Fish Merchants Ltd. did not receive a response to their requirement for review.
26 September 2014	Ross Dougal Fish Merchants Ltd. wrote to the Commissioner's Office, stating that they were dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
1 October 2014	The Council was notified in writing that an application had been received from Ross Dougal Fish Merchants Ltd. and was invited to comment on the application.
17 October 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

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 which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Ross Dougal Fish Merchants Ltd.'s request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. The Council explained that their original response to Ross Dougal Fish Merchants Ltd.'s request was issued on 1 July 2014. Unfortunately, due to a misspelling of Ross Dougal Fish

Merchants Ltd.'s email address, the email did not reach them and they did not receive the Council's response.

5. The Council accepts that it failed to respond to Ross Dougal Fish Merchants Ltd.'s request and requirement for review within the statutory timescales, and has indicated that it intends to post its response to Ross Dougal Fish Merchants Ltd. This had not been done by the time of this decision.
6. It is a matter of fact that the Council did not provide a response to Ross Dougal Fish Merchants Ltd.'s requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. 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 of FOISA.

Decision

The Commissioner finds that Scottish Borders 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 Ross Dougal Fish Merchants Ltd. In particular, the Council failed to respond to Ross Dougal Fish Merchants Ltd.'s request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide Ross Dougal Fish Merchants Ltd. with a response to their requirement for review, by **Monday 8 December 2014**.

Appeal

Should either Ross Dougal Fish Merchants Ltd. or Scottish Borders 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 Scottish Borders 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.

Alison Davies
Deputy Head of Enforcement

24 October 2014

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