

Decision Notice

Decision 010/2015: Mr Roy Mackay and Scottish Borders Council

Curator ad litem and reporting officer candidates: failure to respond within statutory timescales

Reference No: 201402850

Decision Date: 22 January 2015



Scottish Information
Commissioner

Summary

On 19 October 2014, Mr Mackay asked Scottish Borders Council (the Council) for information about consulting with the Sherriff Principal (Lothian and Borders) regarding new candidates. This decision finds that Scottish Borders Council failed to comply with Mr Mackay's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

Date	Action
19 October 2014	Mr Mackay made an information request to the Council.
13 November 2014	The Council responded to the information request.
16 November 2014	Mr Mackay wrote to the Council, requiring a review of its decision.
17 November 2014	Although Mr Mackay received an acknowledgement, he did not receive a response to his requirement for review.
16 December 2014	Mr Mackay 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.
7 January 2015	The Council was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.
20 January 2015	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council explained that a review was carried out on 26 November 2014, but due to an administrative error the outcome was not communicated to Mr Mackay.
2. The Council acknowledged that it had failed to respond to Mr Mackay's requirement for review within the statutory timescale, and confirmed a response would be sent to Mr Mackay. This had not been done by the time of this decision.
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. This is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. 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.

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 Mr Mackay. In particular, the Council failed to respond to Mr Mackay's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Mr Mackay's requirement for review, by **Monday 9 March 2015**.

Appeal

Should either Mr Mackay 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 fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that [public authority] 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.

Euan McCulloch
Deputy Head of Enforcement

22 January 2015

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