

Decision Notice

Decision 256/2016: Mr S and East Dunbartonshire Council

Employment matters: failure to respond within statutory timescales

Reference No: 201601988

Decision Date: 5 December 2016



Scottish Information
Commissioner

Summary

East Dunbartonshire Council (the Council) was asked for a range of information on employment matters, particularly in relation to the employment of people with protected characteristics. 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 the requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
9 August 2016	Mr S made an information request to the Council.
	The Council did not respond to the information request.
8 September 2016	Mr S wrote to the Council requiring a review of its failure to respond.
6 October 2016	The Council acknowledged the requirement for review. It asked Mr S to provide clarification on specific parts of his request. It explained there was a delay in providing a full response, but offered to send information as it became available.
6 October 2016	Mr S clarified his request and confirmed that he wanted information to be sent to him as it became available.
6 October 2016	Mr S received a partial response to his request and requirement for review.
31 October 2016	Mr S wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond in full and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11 November 2016	The Council was notified in writing that an application had been received from Mr S and was invited to comment on the application.
25 November 2016	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 Mr S'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. It is a matter of fact that the Council did not provide a full response to Mr S's requirement for review within 20 working days (even though a partial response was sent on 6 October 2016), so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The Council has acknowledged that it had breached section 10 and 21 of FOISA by failing to respond timeously to Mr S's request and requirement for review. It has advised the Commissioner that it has drawn up procedural changes, with a revision to its request tracking database, to allow clearer monitoring of its internal reviews.
6. 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.
7. The Commissioner notes that the Council has apologised to Mr S for the delay in providing a full response, and has stated that it will issue a full review response to Mr S very shortly.

Decision

The Commissioner finds that East Dunbartonshire 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 S. In particular, the Council failed to respond to Mr S'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 provide a response to Mr S's requirement for review, by **Thursday 19 January 2017**.

Appeal

Should either Mr S or East Dunbartonshire Council (the 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 East Dunbartonshire 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

5 December 2016

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