

Decision Notice 025/2020

Gaelic Medium education funding: failure to respond

Applicant: The Applicant

Public authority: Highland Council

Case Ref: 202000062



Scottish Information
Commissioner

Summary

On 9 October 2019, the Applicant asked Highland Council (the Council) for information about; (i) the actual income and expenditure figures for each of the last four fiscal years and (ii) the estimated income and expenditure figures for the current fiscal year, in relation to Gaelic Medium Education, broken down into a number of categories.

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 Applicant's 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 October 2019 | The Applicant made an information request to the Council. |
| 16 October 2019 | The Council acknowledged the request, but also asked the Applicant to confirm his real name as it did not appear to have been stated in the original request. |
| 16 October 2019 | The Applicant provided his name and confirmed that he wished to proceed with the request. (For the avoidance of any doubt, the Commissioner confirms that he considers this to be the date of the request.) |
| 17 October 2019 | The Council accepted the request as valid and confirmed it would proceed with the request. |
| 15 November 2019 | Having received no response to his request, the Applicant wrote to the Council requiring a review of its failure to respond. |
| | The Applicant did not receive a response to his requirement for review. |
| 22 November 2019 | The Applicant emailed the Council again, asking it to respond to his requirement for review. |
| 25 November 2019 | The Council acknowledged the Applicant's emails and confirmed that a review was being carried out. The Applicant did not receive a response to his requirement for review. |
| 6, 16 and 21 December 2019 | The Applicant emailed the Council again on three separate occasions to ask for updates on his request, but did not receive a response. |
| 13 January 2020 | The Applicant wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 16 January 2020 | The Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application. |
| 30 January 2020 | The Commissioner received submissions from the Council. These submissions are considered below. |

Commissioner's analysis and findings

1. The Council acknowledged that it had failed to respond to the Applicant's request or his requirement for review. It apologised for these failures and the poor handling of this request.
2. The Council explained that responsibility for the management of the information requested lay with two separate services. It acknowledged that responding to the request had not been prioritised. While noting substantial workloads, it acknowledged that the lengthy delay in this request was not acceptable.
3. 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.
4. It is a matter of fact that the Council did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. 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.
6. It is a matter of fact that the Council did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it 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: he now requires a review to be carried out in accordance with section 21.
8. The Commissioner recommends that the Council apologises to the Applicant for its failures to comply.

Decision

The Commissioner finds that Highland 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 the Applicant. In particular, the Council failed to respond to the Applicant'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 respond to the Applicant's requirement for review, by **Friday 20 March 2020**.

Appeal

Should either the Applicant or Highland 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 Highland 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.

Euan McCulloch
Deputy Head of Enforcement

4 February 2020

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