

Decision Notice 091/2020

Financial transactions: failure to respond

Applicant: The Applicant

Public authority: Comhairle nan Eilean Siar

Case Ref: 202000684



Scottish Information
Commissioner

Summary

On 12 February 2020, the Applicant asked Comhairle nan Eilean Siar (the Council) for information about financial transactions over £500. This decision finds that the Council failed to comply with Applicant's requirement for review within the timescale 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
12 February 2020	The Applicant made an information request to the Council.
11 March 2020	The Council responded to the information request.
12 March 2020	The Applicant wrote to the Council, requiring a review of its decision as he did not accept all information had been provided.
	The Applicant did not receive a response to his requirement for review.
13 April 2020	The Applicant wrote to the Council requesting an update.
11 May 2020	The Applicant wrote to the Council requesting an update.
12 May 2020	The Council advised the Applicant it was awaiting an internal update and would forward the additional information once received.
1 July 2020	The Applicant wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond to his requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13 July 2020	The Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
23 July 2020	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. In its submissions to the Commissioner, the Council stated that it did not accept that the application to the Commissioner was valid in terms of section 47(1) of FOISA. It did not consider the Applicant's email of 12 March 2020 to be a valid requirement for review, being merely a comment that some information was missing from the response. The Council also stated that the response to the request provided on 11 March 2020 advised the Applicant to contact a named individual at the Council, should he require a review to be conducted (a procedure he did not follow).

2. The Council confirmed that it would carry out a review in accordance with section 21 of FOISA, but wished to await the Commissioner's decision before doing so.
3. The Commissioner considers the Applicant's email of 12 March 2020 to be a requirement for review made under the terms of section 20 of FOISA. A valid requirement for review must:
 - be in writing or some other permanent form
 - state the name and address of the applicant
 - specify the request to which the request for a review relates and
 - specify the reasons for the applicant's dissatisfaction.
4. The email of 12 March 2020 did all of these things and therefore satisfies the requirements of section 20 of FOISA. In particular, it stated that the Applicant did not consider he had received all the information he sought, a clear and intelligible statement of dissatisfaction. While the Applicant did not send his review request to the person named in the initial response, this is not a requirement set down in FOISA.
5. The Commissioner therefore concludes that the Applicant made a valid requirement for review and, subsequently, a valid application to the Commissioner in terms of section 47(1) of FOISA.
6. 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.
7. 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 failed to comply with section 21(1).
8. 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.
9. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that 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 requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide a review outcome to the Applicant, by 14 September 2020.

Appeal

Should either the Applicant or 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 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

30 July 2020

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