



Decision Notice 040/2023

Animal welfare – failure to respond

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202300078

Summary

The Applicant asked the Authority for various information about the welfare of her dogs. This decision finds that the Authority failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 23 September 2022.
2. The Authority responded to the information request on 20 October 2022.
3. On 20 October 2022, the Applicant wrote to the Authority requiring a review of their decision.
4. The Applicant did not receive a response to her requirement for review.
5. The Applicant wrote again on 6 January 2023 complaining that she had not received a response to her requirement for review. The Authority responded to advise that the Applicant was out of time to seek a review, failing to take into consideration the review requirement made on 20 October 2022.
6. The Applicant wrote to the Commissioner on 18 January 2023, stating that she was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

8. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 20 February 2023.
9. The Commissioner received submissions from the Authority, initially on 20 February 2023 but updated on 2 May 2023.
10. The Authority acknowledged that it had failed to respond to the requirement for review.
11. The Authority explained that it had not interpreted the request for review correctly, which led to the failure to respond to the Applicant.
12. 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.
13. It is a matter of fact that the Authority 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) of FOISA.
14. The Authority responded to the Applicant's requirement for review on 4 April 2023, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
15. The Commissioner notes that the Authority has apologised to the Applicant for its failure to comply.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant) or the Authority 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.

Euan McCulloch
Deputy Head of Enforcement

10 May 2023