

Decision Notice



Decision 143/2011 Ms Geraldine Bell and Glasgow City Council

Failure to respond to request for review

Reference No: 201100835
Decision Date: 22 July 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether Glasgow City Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Geraldine Bell.

Background

1. On 3 February 2011, solicitors instructed to act on behalf of Ms Bell regarding a claim for damages in relation to injuries sustained as a result of a fall wrote to Glasgow City Council (the Council). Their letter was addressed to the Claims Section within the Council's Financial Services and set out the background to the claim. The letter went on to indicate that the following information was being requested under FOISA.

Copies of any risk assessments carried out at [a named school] relative to the step/fire exit/driveway area where Ms Bell tripped, along with details of any complaints made about that area over the last five years.

2. Subsequent references to correspondence from and to Ms Bell should be read as including correspondence sent from and to her solicitors on her behalf.
3. In a letter dated 17 February 2011, issued by its Claims Section, the Council advised Ms Bell that the request for information set out in paragraph 1 would be dealt with by its Education Services. The Claims Section went on to separately address the other matters raised in her letter.
4. On the same date, the Council's Education Service wrote to Ms Bell acknowledging receipt of her request, indicating that it would be handled as a request made under FOISA.
5. On 11 March 2011, the Council's Education Service provided a response to Ms Bell's information request. It advised her that it did not hold the information requested, but noted that she may be able to obtain the information from the company which employs the janitor in the named primary school. The Council provided Ms Bell with the contact details of that company.
6. The Council's letter of 11 March 2011 indicated that if Ms Bell was dissatisfied with its response, she could request a review by writing to its Executive Director of Corporate Services.



7. On 24 March 2011, Ms Bell wrote to the Council's Claims Section, referring to the letter of 11 March 2011, and requesting a review of the Council's handling of her request of 3 February. In particular, Ms Bell drew the Council's attention to the fact that the janitor is not responsible for conducting risk assessments at the school, that is the responsibility of the local authority. Ms Bell argued that the requested information should be held by either the Head Teacher or the Council.
8. Ms Bell did not receive a response to her request for review and on 5 May 2011 wrote to the Commissioner's Office, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Ms Bell had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 11 May 2011, the Council was notified in writing that an application had been received from Ms Bell and was invited to comment on the application.
11. The Council responded on 1 June 2011. In its response the Council commented on the context and its handling of Ms Bell's letter of 3 February 2011. It noted that this contained the request set out in paragraph 1 above, which specifically referred to FOISA, but also raised matters relating to a claim for compensation.
12. The Council explained that the Council's Education Service was asked to respond to the information request, while the Claims Section had separately responded in relation to the other matters
13. It noted that when its Education Service responded to Ms Bell's information request on 11 March 2011, it indicated that if she was dissatisfied with that response, a request for review should be submitted to its Executive Director or Corporate Services. However, Ms Bell went on to direct her request for review to the Claims Section within its Finance Service.
14. The Council acknowledged that its Claims Section did not forward this to its Education Service, and so the department which issued the response to Ms Bell's request under FOISA, was not aware that Ms Bell had submitted a request for review on 24 March 2011. The Council indicated that it was this administrative error that led to its failure to respond to Ms Bell's request for review.
15. The Council also submitted that the high level of correspondence received on a daily basis by all of the Council's services coupled by the wrong addresses used by Ms Bell must be taken into account when considering how the Council dealt with Ms Bell's request for information.



16. The Council advised that it had since undertaken a formal review of its handling of Ms Bell's information request and its response was issued to Ms Bell on 1 June 2011.
17. The Council informed the Commissioner that in order to prevent such procedural breaches from being repeated, a series of internal meetings had taken place resulting in further training being undertaken, procedures re-enforced and fresh internal procedures being put in place to deal with any future requests made in this way.

Commissioner's analysis and findings

18. Section 21(1) of FOISA gives a Scottish public authority a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
19. Section 21(4) sets out what an authority might do when it conducts a review. The authority can:
 - a. confirm its original decision, with or without modification;
 - b. substitute a different decision for that originally made, or
 - c. reach a decision, where the applicant's complaint is that none has been made.
20. Section 21(5) of FOISA then requires the authority to notify the applicant of what it has done under section 21(4), and issue a statement of its reasons for so doing, within the time allowed by section 21(1).
21. The Commissioner notes that Ms Bell did not direct her request for review either to the person and address specified in the Council's response to her information request, or to the department which had handled her request for information. He considers that the Claims Section would reasonably have read this letter as a continuation of correspondence on the other matters that it had been addressing following the receipt of Ms Bell's letter of 3 February 2011, and recognises that this was a factor contributing to the Council's failure to recognise and act upon Ms Bell's request for review.
22. However, the Commissioner must also note that FOISA simply requires that a request for review is submitted to the public authority concerned; it does not require it to be submitted to a particular person or department. It is the public authority's responsibility to ensure that correspondence it receives in relation to an information request is processed accordingly, regardless of which person or department receives it.
23. Ms Bell submitted a valid requirement for review to the Council on 24 March 2011 and so the Commissioner must find that the Council failed to carry out a review in response to Ms Bell's requirement for review, as required by section 21 of FOISA (and in particular subsections (4) and (5)), within the 20 working days allowed by section 21(1).



24. However, the Commissioner notes that the Council has since undertaken a review and provided a notice of its outcome to Ms Bell in relation to her request of 3 February 2011.
25. The Commissioner has noted the Council's comments in respect of the causes of its failure to respond to Ms Bell's requirement for review within the statutory timescale, and the steps it has taken and intends to take to avoid similar breaches in future.
26. Given the circumstances, he does not require the Council to take any action in respect of this failure to comply with the timescale set out in section 21(1) of FOISA.

DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Ms Bell, in particular by failing to respond to Ms Bell's request for review within the relevant timescales set out in section 21(1) of FOISA.

Given that the Council has now conducted a review and notified Ms Bell of its outcome, the Commissioner does not require the Council to take any action in respect of this failure in response to Ms Bell's application.

Appeal

Should either Ms Bell or Glasgow City Council wish to appeal against this decision, there is an 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 notice.

Claire Sigsworth
Deputy Head of Enforcement
22 July 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

..

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.

- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...