

Decision Notice 009/2022

Nairn Common Good: management/ maintenance of Nairn Links and associated facilities/equipment – failure to respond

Applicant: The Applicant

Public authority: Highland Council

Case Ref: 202101323



Scottish Information
Commissioner

Summary

The Applicant asked Highland Council (the Council) for information relating to Nairn Common Good. This concerned the agreement/contract between the Council and High Life Highland (HLH) for the management/maintenance of Nairn Links and all facilities/equipment thereon, associated expenditure and how these leisure facilities were run and funded.

This decision finds that the Council failed to respond to the information request and request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Council on 9 August 2021.
2. The Council issued an acknowledgement on 10 August 2021, but did not respond to the information request.
3. On 20 September 2021, the Applicant wrote to the Council requiring a review of its failure to respond.
4. Although the Council sent an acknowledgement on 22 September 2021, the Applicant did not receive a response to her requirement for review.
5. As the Applicant had still not received a response, she wrote again to the Council on 4 and 13 October 2021 asking it to respond and to review its handling of her request.
6. Having still received no response, the Applicant wrote to the Commissioner on 19 October 2021, stating that she 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.
7. On 26 October 2021, the Council was notified in writing that an application had been received from the Applicant and it was invited to comment on the application.
8. The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

9. In its submissions to the Commissioner, the Council confirmed that the Applicant's request, request for review and follow-up emails had been received and it acknowledged its failures to respond.
10. It explained that, due to administrative errors and communication issues, it had failed to correctly log the Applicant's request for review. In light of this, it was unaware of the requirement to carry out a review of her request.
11. The Council acknowledged that, having received no response to her request for review, the Applicant had emailed the Council again chasing this up, but it held no evidence of having replied to that correspondence. Once the Applicant's email of 13 October 2021 had been received, the Council acted to ensure a response was provided, and this was issued on 5 November 2021.
12. The Council stated that this matter had been raised with staff in the Customer Resolution Improvement Team as the request should have been escalated at an earlier date and the Applicant should not have had to follow up the request on so many occasions. It explained it

had also discussed a number of communication issues concerning the handling of the request which led to the delayed response.

13. The Council also confirmed that it was discussing the handling of this request with HLH (which is also subject to FOISA), as the information concerned the services it provides on the Council's behalf.
14. The Council apologised for its poor handling of the request.
15. 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.
16. 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.
17. 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.
18. 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) of FOISA.
19. As the Council responded to the Applicant's requirement for review on 5 November 2021, the Commissioner does not require it to take any further action in relation to the Applicant's application.
20. The Commissioner notes that the Council issued an apology to the Applicant in its review response and in its submissions to the Commissioner for its failure 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 dealing with 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 does not require the Council to take any action in respect of these failures in response to the Applicant's application, given that a review response has now been issued.

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.

Wendy Snedden
Freedom of Information Officer

19 January 2022

Scottish Information Commissioner

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