



Scottish Information
Commissioner
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Decision Notice 122/2022

Allocation and transfer of vacated storage units – failure to respond

Applicant: The Applicant

Authority: British Waterways Board trading as Scottish Canals

Case Ref: 202201139

Summary

The Applicant asked the Authority for information about the allocation and transfer of vacated storage units. This decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 19 August 2022.
2. The Authority responded to the information request on 7 September 2022.
3. On 9 September 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 14 October 2022, the Applicant wrote to the Commissioner, stating that he 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.
6. 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

7. 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 18 October 2022.
8. The Commissioner received submissions from the Authority. These submissions were considered.
9. The Authority did not dispute that the Applicant's request for review was not responded to.
10. In its initial response, the Authority failed to provide the Applicant with his right to request a review of the refusal to respond.
11. Following advice from the Commissioner, the Authority responded to the Applicant's requirement for review, on 2 November 2022, by issuing a refusal notice, providing the Applicant with his right to appeal to the Commissioner, in respect of the decision to issue a refusal notice.
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 remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
15. The Commissioner does not require the Authority to take any further action in relation to the Applicant's application given that a refusal notice was issued on 2 November 2022.
16. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise 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 Applicant's requirement for review within the timescales laid down by sections 21(1) of FOISA. Given that the Authority has now issued a refusal notice in response 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.

Jill Walker

Freedom of Information Officer

8 November 2022