

Decision Notice 022/2021

Modernisation of bus network – failure to respond

Applicant: the Applicant

Public authority: City of Edinburgh Council

Case Ref: 202001355



Scottish Information
Commissioner

Summary

The Applicant asked the City of Edinburgh Council (the Council) for information about a transport report that discussed the modernisation of the City's bus network. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and that the review outcome failed to comply with section 21(10) of FOISA.

Background

1. The Applicant made an information request to the Council on 2 August 2020.
2. The Council did not respond to the information request.
3. On 1 October 2020, the Applicant wrote to the Council requiring a review of its failure to respond.
4. On 30 October 2020, the Council responded to the Applicant's requirement for review but it treated it as an initial request, notifying the Applicant of his right to seek a review if he was unhappy with its response.
5. The Applicant wrote to the Commissioner on 13 November 2020, stating that he was dissatisfied with the Council's failure to identify and respond appropriately to his requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 14 January 2021, the Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

8. The Council acknowledged that it failed to process the Applicant's request for information in line with its statutory obligations and it apologised for this failure.
9. The Council also wrote to the Applicant on 10 February 2021 and apologised for this failure and it provided him with an explanation of the reasons why it had concluded that section 17(1) (Notice that information is not held) applied to his request.
10. The Council explained that there was an initial failure within its Transport Team to recognise the Applicant's e-mail on 2 August 2020 as a request being made under FOI legislation, rather than a business as usual enquiry. The Council acknowledged that there was also a failure within its Information Governance Unit, at a number of stages, to recognise that the Applicant's email of 1 October 2020, was seeking a review of a failure to respond rather than making a new request. The Council noted that these were essentially human errors, and it again apologised.
11. The Council submitted that its handling errors were only identified when it received notification of the Applicant's application to the Commissioner on 25 November 2020. Following this, the Council discussed the case internally and identified a number of learning points. These included the need to refresh awareness within the Transport Team of the identification and processing of FOI requests, and internal unit matters including ensuring

that those logging and dealing with FOI requests are reminded to check what the applicant is requesting to ensure that Review Requests are directed to the Information Compliance Team rather than the Information Rights Team. The Council submitted that the actioning of these learning points is on-going and is discussed regularly at its FOI meetings to ensure they are embedded in practice.

12. The Council submitted that it has also undertaken a review of the response provided to the Applicant and while it maintained that its response was correct, in that no recorded information is held, it now considers that it should have provided the Applicant with a narrative to explain why this is the case.
13. The Council explained that the phrase in the Committee Report about which the Applicant's request relates, was non-specific to other cities and was written based on the professional knowledge of the report writer rather than any reference to recorded information held by the Council. The report writer's knowledge is that areas including Manchester and the Wirral are undertaking the work mentioned, in addition to Dublin, but that the Council holds no recorded information about these, hence the application of Section 17 to the FOI request.
14. 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.
15. 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.
16. Section 21(10) of FOISA requires Scottish public authorities to ensure that any response issued under section 21(5) contains particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56. It is a matter of fact that the Council's response to the Applicant's requirement for review did not contain advice about the Applicant's right of application to the Commissioner or appeal.
17. It is clear to the Commissioner that the Council treated the Applicant's requirement for review as an initial request, and its email of 30 October 2020, was essentially a first response to that request. However, the Commissioner considers that any response issued after a valid requirement for review has been received by an authority, constitutes the authority's review outcome.
18. In light of this, the Commissioner does not require the Council to take any further action in relation to the Applicant's application.

Decision

The Commissioner finds that the City of Edinburgh Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (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 within the timescales laid down by sections 10(1) of FOISA and it also failed to comply with the requirements of section 21(10) 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.

Appeal

Should either the Applicant or the City of Edinburgh 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.

Claire Stephen
Deputy Head of Enforcement

12 February 2021

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