

Decision Notice

Decision 176/2018: Mr M and Highland Council

Removal of public telephone box: failure to respond within statutory timescales

Reference No: 201801415

Decision Date: 05 November 2018



Scottish Information
Commissioner

Summary

Mr M asked Highland Council (the Council) for information about the removal of a public telephone box and the location of the public phone nearest Dalwhinnie. 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). The decision also finds that the Council failed to comply with Mr M's requirement for review within the timescale set down by FOISA.

Background

Date	Action
19 February 2018	Mr M made an information request to the Council.
	The Council did not respond to the information request.
27 April 2018	Mr M wrote to the Council requiring a review of its failure to respond.
	Mr M did not receive a response to his requirement for review.
22 August 2018	Mr M wrote to the Commissioner's Office, stating that he 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.
5 October 2018	The Council was notified in writing that an application had been received from Mr M and was invited to comment on the application.
19 October 2018	The Council provided submissions (considered below).

Commissioner's analysis and findings

1. 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.
2. It is a matter of fact that the Council did not provide a response to Mr M's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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
4. It is a matter of fact that the Council did not provide a response to Mr M's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. The Council responded to Mr M's requirement for review on 25 October 2018 so the Commissioner does not require it to take any further action in relation to Mr M's application.

6. The Council has explained to the Commissioner the reasons why it failed to respond to Mr M's request and request for review. In summary, the staff who received his letter did not recognise that it contained a request for information. The Council has explained what action it has taken to remedy this situation.

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 responding to the information request made by Mr M. In particular, the Council failed to respond to Mr M'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 Mr M's application, given that a review response was issued on 25 October 2018.

Appeal

Should either Mr M 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.

Alison Davies
Deputy Head of Enforcement

05 November 2018

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