

Decision Notice

Decision 194/2018: Mr B and Glasgow City Council

Workforce Pay and Benefit Review: failure to respond within statutory timescales

Reference No: 201801778

Decision Date: 28 November 2018



Scottish Information
Commissioner

Summary

Glasgow City Council (the Council) was asked for the handwritten notes regarding the planning/implementation of the Workforce Pay and Benefit Review (WPBR) from October 2005 to November 2006. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
10 August 2018	Mr B made an information request to Glasgow City Council.
7 September 2018	The Council responded to the information request.
11 September 2018	Mr B wrote to the Council, requiring a review of its decision.
	Mr B did not receive a response to his requirement for review.
17 October 2018	Mr B wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7 November 2018	The Council was notified in writing that an application had been received from Mr B and was invited to comment on the application.
15 November 2018	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council confirmed that Mr B's requirement for review had been received. It explained that it had not been responded to because it had been quarantined as "spam" and that such an email is only held for 30 days and then deleted.
2. The Council acknowledged that this had happened before to one of Mr B's requests, as noted in Decision 012/2018. At that time, the Council's IT Department took steps to resolve the technical issues relating to the FOI Review Team's mailbox, to prevent emails being lost in this way.
3. The Council explained that the issue had recurred because of an upgrade applied to the filtering software (during the summer), which affected the measures put in place for the earlier version and meant that the Review Team was no longer getting the notifications it required. The Council confirmed that it had since applied a more specific fix concerning the email address in question, which would no longer be subject to "spam" filtering.
4. The Council confirmed, now that it was aware of Mr B's requirement for review, that it was being actioned and a response would be sent to him as soon as possible. This had not, however, been done by the date of this decision.

5. 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.
6. It is a matter of fact that the Council did not provide a response to Mr B's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
8. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr B for its failure to respond and the technical issues surrounding receipt of his emails.

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 responding to the information request made by Mr B. In particular, the Council failed to respond to Mr B's requirement for review within the timescale laid down by sections 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Mr B's requirement for review, by **Monday 14 January 2019**.

Appeal

Should either Mr B or Glasgow City 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.

Enforcement

If Glasgow City Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

28 November 2018

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info