

Decision Notice

Decision 209/2018: D and the University of Aberdeen

Disciplinary procedures: failure to respond within statutory timescales

Reference No: 201801827

Decision Date: 18 December 2018



Scottish Information
Commissioner

Summary

On 27 August 2018, D asked the University of Aberdeen (the University) for information about any disciplinary procedures that were taken against a named employee in relation to a specified incident. This decision finds that the University failed to respond to the requirement for review as required by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
27 August 2018	D made an information request to the University.
24 September 2018	The University responded to the information request.
23 October 2018	D wrote to the University requiring a review of its decision.
25 October 2018	The University notified D that it would not be carrying out a review as the requirement for review was made more than 40 working days after the University had responded to the information request.
25 October 2018	D wrote to the Commissioner's Office, expressing dissatisfaction with the University's refusal to carry out a review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
29 November 2018	The University was notified in writing that an application had been received from D and was invited to comment on the application.
3 December 2018	The Commissioner received submissions from the University. These submissions are considered below.

Commissioner's analysis and findings

1. Section 20(5) of FOISA sets out that a requirement for review must be made not later than the fortieth working day after the expiry of the time allowed by or by virtue of section 10(1) for complying with the request.
2. It is a matter of fact that the University responded to the information request from D on 24 September 2018, and received a request for review 21 working days after that, well within the period allowed by section 20(5) of FOISA.
3. Accordingly, the Commissioner finds that, by refusing to carry out a review, the University failed to comply with section 21(1) of FOISA, which requires a Scottish public authority receiving a requirement for review to respond within a maximum of 20 working days following the date of receipt.
4. The University responded to D's requirement for review on 12 December 2018, so the Commissioner does not require it to take any further action.

5. In submissions to the Commissioner, the University explained that it had made an error when it calculated the timescales for making a requirement for review as it had used the date when the information request was received and not the date when its response was issued.

Decision

The Commissioner finds that the University of Aberdeen (the University) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by D. In particular, the University failed to respond to the requirement for review as required by section 21(1) of FOISA.

Given that the University has now issued a review response, the Commissioner does not require the University to take any further action in respect of this failure.

Appeal

Should either D or the University of Aberdeen 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

18 December 2018

Scottish Information Commissioner

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