



Scottish Information
Commissioner

**Decision 026/2005 – Mrs D Stuart, Secretary of Crookfur
Community Association, and East Renfrewshire Licensing
Board**

*Failure to respond to a request for copies of information relating to a special
Licensing Board meeting*

**Applicant: Mrs D Stuart, Secretary of Crookfur Community
Association**

Authority: East Renfrewshire Licensing Board

Case No: 200502045

Decision Date: 22 September 2005

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 026/2005 – Mrs D Stuart, Secretary of Crookfur Community Association and East Renfrewshire Licensing Board

Failure of East Renfrewshire Licensing Board to respond to an information request and subsequent request for review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002

Facts

1. The Scottish Information Commissioner received an application for decision from Mrs D Stuart, Secretary of Crookfur Community Association, on 15 August 2005. Mrs Stuart stated that on 15 May 2005 an email was sent to East Renfrewshire Licensing Board (the Board) requesting the following information:
 - Copies of the minutes of the Special Licensing Board meeting held on 19 April 2005.
 - Copies of all documents referred to during the meeting (e.g. police reports)
2. No response was received from the Board, despite a reminder being sent on 12 June 2005.
3. Mrs Stuart's application stated that a further email was sent on 13 July 2005, requesting that the Council review its failure to respond to its request, and to now provide the information sought. This email appears to be a valid request for review under the Freedom of Information (Scotland) Act 2002 (FOISA), but no response was received, despite a further reminder being issued on 1 August 2005.
4. The Commissioner issued an information notice to the Board on 22 August 2005, notifying it of Mrs Stuart's application and inviting it to comment under the terms of section 49(3) of FOISA. Copies of the four emails sent to the Board by Mrs Stuart in relation to her request were provided, and the Board was asked to explain why no response had been provided. Three of these emails had been directed to the Depute Clerk to the Board, and the fourth was addressed to the Clerk to the Board.



The Board's response

5. The Board's response to the information notice was received on 5 September 2005. This stated that none of the emails sent by Mrs Stuart in relation to this request were received by the Board. In the case of the email addressed to the Clerk to the Board, this was due to a misspelling of the address. However, the three emails to the Depute Clerk (which included the initial request and request for review) were correctly addressed.
6. The Board expressed its concern at learning that these emails had not been received and informed the Commissioner that it asked the Head of E-Government at East Renfrewshire Council (the provider of IT systems to the Board) to investigate. A number of possible reasons were identified as to why the emails were never received by the Board. It appears, however, that the emails had been received by the Council's central email system, but not forwarded to the intended recipient because they were identified as "spam". In such circumstances, the email would be "quarantined" and then deleted after three days.
7. The Board indicated that because of problems that may arise with email communications, the Council recommends that requests for information are made to a central customer service email address. Email to this address is not subject to spam filtering.

Steps taken by the Board

8. Following receipt of the information notice issued in this case, the Board wrote to Mrs Stuart providing a copy of the minute of the Special Licensing Board meeting held on 19 April 2005 and a copy of a related letter.
9. In its response to the information notice, the Board also indicated that further investigations would be carried out to establish whether the failure to receive emails in this case was an isolated problem and to identify any changes that may be required. In subsequent correspondence, the Board informed the Commissioner that the sensitivity of the Council's spam filter has since been reduced.

Conclusion

10. Section 1(1) of FOISA entitles individuals to request and receive information from a Scottish public authority. Section 8 of FOISA sets out simple requirements on a requestor; they must make their request in writing or some form capable of permanency, describe the information sought, and provide a name and address for correspondence. While an authority can ask people to make their request through a preferred channel such as a customer service centre, there is no obligation for them to do so, and a request could be directed to any member of staff. An authority must ensure it is able to recognise when a valid request is received and act upon it.



11. In this case, Mrs Stuart's email fulfilled all the requirements of section 8 of FOISA. Although the Board has been unable to locate copies of Mrs Stuart's emails, on balance of probabilities the Commissioner is satisfied that Mrs Stuart's request and request for review reached the email systems used by the Board. He concludes that these emails were technically received by the Board, even if they did not reach the intended recipient (much like letters which reach an organisation's premises but are then accidentally thrown away rather than passed to the addressee). The Council's IT systems were apparently unable to distinguish between a valid request under FOISA (which contained no inappropriate language or attachments) and junk mail. While it is quite appropriate that authorities should have mechanisms in place to filter out junk mail, these mechanisms should also have safe-guards built in to ensure that valid items are identified and passed on.
12. While the technical problems in this case have led to a breach of FOISA, the Commissioner welcomes the steps that the Board has taken to respond the Mrs Stuart's request for information, and to address the cause of its failure to receive her emails.

Decision

In failing to respond until 26 August 2005, East Renfrewshire Licensing Board did not deal with Mrs Stuart's request for information and subsequent request for review in accordance with the following requirements of Part 1 of FOISA:

- Section 10(1), which states that a Scottish public authority must comply promptly with a request for information and in any event by not later than the twentieth working day after the receipt by the authority of the request and
- Section 21(1), which states that a Scottish public authority must comply promptly with a request for review and in any event by not later than the twentieth working day after the receipt by the authority of the request for review.

As information has been provided to Mrs Stuart in response to his information request, the Commissioner does not require the Board to take any steps to comply with Part 1 of FOISA under section 47(6)(b).

This is without prejudice to the right of Mrs Stuart to apply to the Commissioner for a decision in relation to any dissatisfaction she may have with the information which has been provided to her by the Board.



Right of appeal

Should Mrs Stuart or East Renfrewshire Licensing Board wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Margaret Keyse
Head of Investigations