

Decision Notice



Decision 134/2009 Mr Alan Gibson and Scottish Ambulance Service Board

Failure to respond to request for review

Reference No: 200901776

Decision Date: 20 November 2009

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether the Scottish Ambulance Service Board (the SASB) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Gibson.

Background

1. On 8 May 2009, Mr Gibson wrote to the SASB requesting the following information:
“...Please send me any recorded information which your organisation holds on the elimination of on-call at Tain and Alness and any recorded information which your organisation holds which sets out the decision making process behind the decision to eliminate on-call at these ambulance stations”
2. The SASB responded on 8 July 2009, firstly acknowledging the delay in responding to Mr Gibson’s request and enclosing information and comment it believed was pertinent to his request.
3. On 18 July 2009, Mr Gibson wrote to the SASB requesting a review of its decision, on the basis that he believed the organisation should hold more information than it had identified. Mr Gibson also explained that some of the text in the information provided to him was too small to be readable and consequently he asked for readable copies to be supplied to him.
4. The SASB acknowledged receipt of the request for review on 22 July 2009. However, on not receiving a substantive response Mr Gibson wrote again on 31 August 2009, reiterating the points raised in his request for review.
5. On 4 September 2009, the SASB wrote to Mr Gibson confirming that his request for review would be responded to in due course.
6. Mr Gibson did not receive a response to his request for review and on 12 October 2009 he wrote to the Commissioner’s Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Gibson had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

8. On 30 October 2009, the SASB was notified in writing that an application had been received from Mr Gibson and was invited to comment on the application as required by section 49(3)(a) of FOISA. The SASB was asked to comment on the alleged procedural breach only.
9. In a telephone conversation between the investigating officer and Mr Gibson on 16 November 2009, Mr Gibson confirmed he had received a response from the SASB confirming the outcome of its review. Mr Gibson provided a copy of this correspondence to the investigating officer, which confirmed that the SASB had written to Mr Gibson on 11 November 2009. In this response the SASB acknowledged that Mr Gibson had not received a timeous response to his request for review and apologised for this.
10. On 12 November 2009, the SASB wrote to the Commissioner, stating that a review had been carried out and that Mr Gibson should have been advised of this. Subsequent communications with the SASB clarified that the review in August 2009 had been incomplete and that Mr Gibson had not been notified of the outcome at the time. In acknowledgment of this situation, the SASB had carried out a fresh review in response to the Commissioner's investigation, which led to the response being issued to Mr Gibson on 11 November 2009.

Commissioner's analysis and findings

11. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a request for review, subject to certain exceptions which are not relevant in this case.
12. In this case, the SASB acknowledged that it did not complete a review until it was contacted by the Commissioner's Office following Mr Gibson's application. It did not therefore respond within the appropriate timescale laid down in section 21(1) of FOISA.

DECISION

The Commissioner finds that the Scottish Ambulance Service Board (the SASB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Gibson, by failing to respond to his request for review within the timescale laid down by section 21(1) of FOISA.

In the circumstances, noting the SASB's subsequent response to Mr Gibson's request for review, the Commissioner does not (in response to this particular application) require the SASB to take any action in respect of the breach identified in this decision.



Appeal

Should either Mr Gibson or the SASB wish to appeal against this decision, there is an 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 notice.

Euan McCulloch
Deputy Head of Enforcement
20 November 2009



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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