

Decision Notice

Decision 085/2019: Mr A and the Scottish Public Services Ombudsman

Correspondence with Aberdeenshire Council with reference to complaint: failure to respond within statutory timescales

Reference No: 201900463

Decision Date: 28 May 2019



Scottish Information
Commissioner

Summary

On 7 January 2019, Mr A asked the Scottish Public Services Ombudsman (the SPSO) for correspondence with Aberdeenshire Council with reference to a specified complaint. This decision finds that the SPSO failed to comply with Mr A's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
7 January 2019	Mr A made an information request to the SPSO.
31 January 2019	The SPSO responded to the information request.
4 February 2019	Mr A wrote to the SPSO, requiring a review of its decision.
	Mr A did not receive a response to his requirement for review.
11 March 2019	Mr A wrote to the Commissioner's Office, stating that he was dissatisfied with the SPSO's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15 April 2019	The SPSO was notified in writing that an application had been received from Mr A and was invited to comment on the application.
1 May 2019	The Commissioner received submissions from the SPSO. These submissions are considered below.

Commissioner's analysis and findings

1. 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.
2. Mr A sought a review on 4 February 2019 but, as he appeared not to have received a response, he applied to the Commissioner for a decision.
3. The SPSO advised the Commissioner that it did not have a record of having received the requirement for review email dated 4 February 2019. It further advised that it carried out various system checks and searches but was unable to confirm that the email had been received. It did not, however, have IT logs going back as far as 4 February.
4. Mr A's email of 4 February 2019 was sent to inforequests@spsso.gsi.gov.uk from which he should have received an automated acknowledgment. Mr A has not responded to the Commissioner's enquiry regarding receipt of an automated acknowledgement, which would have confirmed that the email was definitely received by the SPSO.
5. The Commissioner is required to come to a conclusion, on the balance of probabilities, as to whether the email was received on 4 February 2019. He has taken account of the copy email provided by Mr A, which appears to confirm that the email was sent to

inforequests@spsos.gsi.gov.uk, an address in current use by the SPSO. He has also taken account of all relevant submissions received from the SPSO, noting the absence of complete IT records for the relevant period. In all the circumstances, the Commissioner is satisfied that the request was received by the SPSO, on 4 February 2019. Consequently, the Commissioner has concluded that the SPSO did not comply with section 21(1) of FOISA in responding to Mr A's requirement for review.

6. The SPSO decided to proceed with issuing a review, on the assumption that the requirement for review was received on 4 February 2019. The review outcome was issued by post on 2 May 2019.

Decision

The Commissioner finds that the Scottish Public Services Ombudsman (the SPSO) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr A. In particular, the SPSO failed to respond to Mr A's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require the SPSO to take any action in respect of this failure in response to Mr A's application, given that a review outcome was issued on 2 May 2019.

Appeal

Should either Mr A or the SPSO 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.

Euan McCulloch
Deputy Head of Enforcement

28 May 2019

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