



# Decision Notice 142/2024

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## Investigation of Care Homes – failure to respond

**Applicant: The Applicant**

**Authority: Angus Council**

**Case Ref: 202400785**

### Summary

The Applicant asked the Authority for various pieces of information relating to an investigation into concerns for vulnerable residents of care homes. This decision finds that the Authority failed to respond to the request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

### Background

1. The Applicant made an information request to the Authority on 1 April 2024.
2. The Authority responded to the information request on 2 May 2024.
3. On 6 May 2024, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. The Applicant wrote to the Commissioner on 5 June 2024, stating that she was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

## Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 12 June 2024.
8. The Commissioner received submissions from the Authority on 26 June 2024. These submissions are considered below.
9. The Authority acknowledged that it had failed to respond to the request and requirement for review on time.
10. It explained that its FOI system had calculated a response date of 30 April 2024, rather than the due date of 29 April 2024. It confirmed this was an error in the system which has since been rectified.
11. The Authority accepted that a response was not issued until 2 May 2024, explaining that the delay was caused by competing deadlines, large workloads and staffing issues which resulted in it not responding to this request on time.
12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
14. The Authority explained that the reasons for the delay in carrying out a review was again due to completing workloads and staffing.
15. The Authority confirmed that it is currently looking at its internal processes and timescales to ensure that future requests and requirements for reviews are dealt with in a timely manner.
16. 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. Again, this is subject to qualifications which are not relevant in this case.
17. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
18. The Authority responded to the Applicant's requirement for review on 6 June 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
19. The Commissioner notes that the Authority apologised to the Applicant for its failure to comply.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

## **Appeal**

Should either the Applicant or the Authority 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.

**Jennifer Ross**  
**Acting Deputy Head of Enforcement**

**27 June 2024**