



Scottish Information
Commissioner
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Decision Notice 226/2024

Home To School Contract – failure to respond

Applicant: The Applicant

Authority: West Lothian Council

Case Ref: 202401130

Summary

The Applicant asked the Authority “what is the oldest age of a vehicle that can operate on a Home to School contraction within West Lothian”. This decision finds that the Authority failed to respond to the request 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 30 January 2024.
2. The Authority responded to the information request on 16 February 2024.
3. On 11 March 2024, the Applicant wrote to the Authority requiring a review in respect of a failure to respond to the request within 20 working days.
4. The Applicant did not receive a response to their requirement for review.
5. The Applicant wrote to the Commissioner on 19 August 2024, stating that they were 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 22 August and 9 September 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. 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.
10. The Applicant sought a review on 11 March 2024, on the basis that the Authority failed to respond to their initial request. The Authority told the Commissioner that the request was treated as an enquiry and that a response was issued to them on 16 February 2024.
11. It was explained to the Applicant on 20 September 2024 that the response was issued via the “Confirm” system used by the Authority’s Operational Services, where the request was allocated to record, monitor and respond to the enquiry. The Authority further explained that the system does not retain copies of actual responses issued but does log information to show that an enquiry has been responded to. Once it had been identified that the Applicant had not received their response, the Authority sent a copy of the record held on the “Confirm” system showing that a response was issued on 16 February 2024 and provided the Applicant with the information that they asked for. The Authority assured the Commissioner that the response was sent out on the date shown on the system. The Applicant has confirmed receipt.
12. The Commissioner is required to come to a conclusion, on the balance of probabilities, as to whether the communication was sent on 16 February 2024. In the light of the information provided by the Authority, he is satisfied that it was. As such, the Commissioner has concluded that the Authority complied with section 10(1) in responding to the Applicant’s request.
13. In its submissions, the Authority stated that the Service in question has been asked to investigate whether the “Confirm” system (that issues automated communications) can capture or record copies of communications to show what is issued to enquirers. The Commissioner notes there may be technical aspects to be considered in this regard.
14. 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.
15. It is a matter of fact that the Authority did not provide a response to the Applicants’ requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
16. The Authority acknowledged that it failed to respond to the requirement for review within the timescale allowed.

17. The Authority confirms, following work undertaken with the Authority's information management working group, that a reminder will be issued to Services that requests for reviews should be logged and allocated even if it appears that a timely response has been issued to an initial request, where the reason for review relates to an apparent failure to reply.
18. The Authority responded to the Applicants' requirement for review on 20 September 2024, so the Commissioner does not require it to take any further action in relation to the Applicants' application.
19. The Commissioner notes that the Authority has apologised to the Applicant for its earlier failure to comply with the requirement for review.

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 Applicants' request for requirement for review within the timescales laid down by sections 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 further action in this case.

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.

Euan McCulloch
Head of Enforcement

08 October 2024