

Decision Notice

Decision 062/2017: Mr A and City of Edinburgh Council

Burial lair records: failure to respond within statutory timescales

Reference No: 201700182

Decision Date: 02 May 2017



Scottish Information
Commissioner

Summary

On 20 November 2016, City of Edinburgh Council (the Council) was asked for information relating to burial records. This decision finds that the Council failed to comply with Mr A's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
20 November 2016	Mr A made an information request to the Council.
30 November 2016	The Council responded to the information request.
5 December 2016	Mr A wrote to the Council requiring a review of its decision.
	Mr A did not receive a response to his requirement for review.
22 January 2017	Mr A wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7 February 2017	The Council was notified in writing that an application had been received from Mr A and was invited to comment on the application.
21 February 2017	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, the Council confirmed that it had failed to comply with Mr A's requirement for review. It explained that the relevant service areas had failed to follow the Council's Freedom of Information policy and procedures.
2. The Council notified the Commissioner that a review outcome was issued to Mr A on 21 February 2016. A copy was provided to the Commissioner.
3. 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.
4. It is a matter of fact that the Council did not provide a response to Mr A's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. As the Council responded to Mr A's requirement for review on 21 February 2017, the Commissioner does not require it to take any further action in relation to Mr A's application.
6. The Commissioner notes that the Council apologised in its review outcome for its failure to respond within 20 working days. It is also noted that the relevant service areas have been asked to familiarise themselves with the Council's guidance on how to receive and deal with Freedom of Information requests.

Decision

The Commissioner finds that City of Edinburgh Council (the Council) 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 Council failed to respond to Mr A's requirement for review within the timescale laid down by 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mr A's application, given that it has now issued a review outcome.

Appeal

Should either Mr A or City of Edinburgh Council 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

02 May 2017

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