

Decision Notice

Decision 103/2017: Mr K and City of Edinburgh Council

Interment and lair records: failure to respond within statutory timescales

Reference No: 201700951
Decision Date: 03 July 2017



Scottish Information
Commissioner

Summary

On 5 March 2017, City of Edinburgh Council (the Council) was asked for information on specific interment and lair records for Ratho Burial Ground (Ratho Churchyard) providing names and dates of those interred, including information from “diggers” books. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
5 March 2017	Mr K made an information request to the Council.
5 April 2017	The Council responded to the information request.
8 April 2017	Mr K wrote to the Council requiring a review of its decision.
	Mr K did not receive a response to his requirement for review.
21 May 2017	Mr K 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.
13 June 2017	The Council was notified in writing that an application had been received from Mr K and was invited to comment on the application.
27 June 2017	The Commissioner received submissions from the Council. 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. It is a matter of fact that the Council did not provide a response to Mr K’s requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
3. The Commissioner provided the Council with a copy of Mr K’s proof of posting, to show that his requirement for review had been posted to the Council’s Head of Strategy and Insight on 13 April 2017.
4. On receipt of this information, the Council checked with various departments to try to locate this letter, confirming that it had not been able to find a record of it.

5. The Council accept it had failed to respond to Mr K's requirement for review, confirming one would be carried out now and Mr K notified of the outcome. This had not been done at the time of this decision.
6. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
7. The Commissioner notes that Mr K will receive an apology from the Council for its failure to comply.

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 K. In particular, the Council failed to respond to Mr K's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Mr K's requirement for review, by **Thursday 17 August 2017**.

Appeal

Should either Mr K 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.

Enforcement

If City of Edinburgh Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

03 July 2017

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