

Decision Notice

Decision 167/2017: Mr Kerry and Highland Council

Complaints and requests: failure to respond within statutory timescales

Reference No: 201701292

Decision Date: 3 October 2017



Scottish Information
Commissioner

Summary

Highland Council (the Council) was asked for information about previous information requests and complaints. This decision finds that the Council failed to respond to the applicant's requirement for review within the timescale allowed by FOISA.

The Commissioner has ordered the Council to respond to the requirement for review.

Background

Date	Action
27 March 2017	Mr Kerry made an information request to the Council.
24 April 2017	The Council responded to the information request.
25 April 2017	Mr Kerry wrote to the Council, expressing dissatisfaction with the way in which the Council had responded.
	Mr Kerry did not receive a response to his requirement for review.
25 July 2017	Mr Kerry 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.
11 September 2017	The Council was notified in writing that an application had been received from Mr Kerry and was invited to comment on the application.
26 September 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 acknowledged that it had failed to respond to Mr Kerry's requirement for review. The Council apologised to the Commissioner for this failure and indicated it would undertake a review as soon as possible.
2. 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.
3. It is a matter of fact that the Council did not provide a response to Mr Kerry's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

4. 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.

Decision

The Commissioner finds that Highland 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 Kerry. In particular, the Council failed to respond to Mr Kerry'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 Kerry's requirement for review by 17 November 2017.

Appeal

Should either Mr Kerry or the 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 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

3 October 2017

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