

# Decision Notice

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## Decision 178/2014 Ms E and West Lothian Council

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### **Policies on addresses marked with indicators**

Reference No: 201400749

Decision Date: 12 August 2014



Scottish Information  
Commissioner

## Summary

On 18 February 2014, Ms E asked West Lothian Council (the Council) about addresses it has marked on its system as being potentially violent and about its policy if a member of staff has to attend these addresses. The Council provided some information.

During the investigation, the Council located more information falling within the scope of Ms E's request. The Commissioner found that the Council should have disclosed this to Ms E in response to her request. As the Council provided this information to Ms E during the investigation, the Commissioner did not require the Council to take any action. The Commissioner also found that the Council was late in responding to Ms E's requirement for review.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (4) (General entitlement); 21(1) (Review by a Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 18 February 2014, Ms E wrote to the Council requesting:
  - The number of addresses marked on its systems as being potentially violent. Ms E asked for yearly figures for the past three years (request 1).
  - The postcodes of these addresses (request 2).
  - A copy of the policy/policies the Council uses if a member of staff has to attend one of these addresses (request 3).
2. On the same day, Ms E wrote to the Council to add a request for her own personal data (request 4) and for:
  - The computer systems, departments and types of staff who have access to the Potentially Violent Person list (request 5).
3. The Council responded on 3 March 2014. For request 1, the Council explained that markers were applied to people who were known to be potentially violent, not to addresses, "as the marker needs to follow the individual." The Council explained what it regarded as potentially violent behaviour. The Council stated that it did not hold a yearly breakdown as requested, but provided Ms E with the cumulative total of potentially violent indicators in place. For request 2, the Council stated that it could not provide postcodes because the markers attached to individuals and not addresses, and – were the postcodes available – release would breach the Data Protection Act 1998. The Council provided an extract from its Health and Safety procedure for request 3.
4. On 3 March 2014, Ms E wrote to the Council requesting a review of its decision. Ms E drew the Council's attention to her dissatisfaction with its response to her subject access request

(request 4) and that part of her request that she believed was not answered. She explained what she had intended to find out by making her request and that she wanted to receive “all policies relating to this.”

5. The Council notified Ms E of the outcome of its review on 1 April 2014. The Council provided Ms E with some of her personal data. The Council provided a copy of its SWIFT Hazard Recording Procedure, explaining that this procedure is followed when it is considered necessary to record a hazard code in relation to a particular service user.
6. On 1 April 2014, Ms E wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Ms E made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to her request. The case was then allocated to an investigating officer.

## **Investigation**

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8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.

## **Commissioner’s analysis and findings**

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9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Ms E and the Council. She is satisfied that no matter of relevance has been overlooked.
10. Ms E’s application raised three points of dissatisfaction: she believed more information was held by the Council that fell within her request; that the Council had breached timescales; and that it should have clarified with her what information she wanted, if that was in doubt.

### *Section 1 - General entitlement*

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable here.
12. Ms E questioned whether she had received all the policies that fell within the terms of her request: for example, whether the Council’s Housing and Customer Services departments had a Potentially Violent Person Indicator policy as well as other departments within the Council.
13. The investigating officer asked the Council how it had ensured that all information falling within Ms E’s request had been identified and located. In preparing its response to this question, the Council located other information (its Housing, Construction and Building Services Warning Indicator procedure), which it provided to Ms E.

14. The Council provided the investigating officer with a list of the information it had sent to Ms E and explained why it was satisfied that it had now identified and provided all the information covered by her request. The Council stated that it had made further checks with all Council Services and could confirm that there were no further policies or guidance held by the Council which relate to violent indicators on attending residences.
15. The Commissioner is satisfied that the Council has now carried out searches which would reasonably be expected to identify any information covered by the terms of Ms E's request, and that all relevant information has now been located and disclosed by the Council.
16. As the Council failed to provide some information when responding to Ms E's request for review, the Commissioner must find that the Council failed to comply fully with section 1(1) of FOISA in dealing with her request.

### **Compliance with timescales**

17. The Commissioner is satisfied that Ms E's email of 3 March 2014 constituted a requirement for review for the purposes of section 20(3) of FOISA. The email expresses dissatisfaction with the Council's response and expects the Council to review this.
18. Section 74 of FOISA makes it clear that where a request for review is sent by email, it is presumed to be received on the day it was sent.
19. From the copy of the email supplied to the Commissioner by Ms E, her email was sent on 3 March 2014 during the afternoon. Accordingly, the email was received by the Council on 3 March 2014.
20. Section 21(1) provides that the authority must comply promptly with a request for review; and in any event by not later than the twentieth working day after it is received. The twentieth working day is, in this instance, 31 March 2014. The review response was sent by email on 1 April 2014.
21. In the circumstances, the Commissioner must find that the Council failed to comply with section 21(1) of FOISA in responding to Ms E's request for review, albeit by one day.

### **Whether the Council should have asked for clarification of the request**

22. In her application for a decision from the Commissioner, Ms E expressed the view that if the Council had needed clarification of her request, this should have been done by communicating with her and relevant Council departments.
23. Section 1(3) of FOISA makes it clear that if a public authority reasonably requires further information from an applicant in order to identify and locate the requested information, it should ask the applicant to provide that information before responding to the request.
24. The Council has acknowledged that, in responding to the request and at review, it did not provide all information covered by Ms E's request as it wrongly understood her to be asking only for those policies which were relied upon in her case; however, it also acknowledged that the request was straightforward and should have been responded to in full.
25. The Commissioner agrees with the Council that Ms E's request was expressed in straightforward terms and, if it had been carefully considered, the Council could have responded in full, without requiring any clarification. In the circumstances, the Commissioner is satisfied that there was no need for the Council to seek clarification from Ms E, but (as noted above) she finds that the Council failed to provide Ms E with all information covered by her request. The Commissioner accepts that this was caused by a misunderstanding on the

part of the Council, and notes that the Council has taken steps to ensure that, in future, information requests receive a full response.

## Decision

The Commissioner finds that West Lothian 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 Ms E.

The Commissioner finds that the Council failed to release all of the information it held which fell within the scope of Ms E's request, as required by section 1(1) of FOISA. As all the information has now been provided, the Commissioner does not require the Council to take any action in respect of this failure in response to Ms E's application.

The Commissioner also found that the Council failed to respond to Ms E's requirement for review within the timescale laid down by section 21(1) of FOISA. As the Council later responded to Ms E requirement for review, the Commissioner does not require it to take any action in respect of this failure.

## Appeal

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Should either Ms E 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.

**Margaret Keyse**  
**Head of Enforcement**  
**12 August 2014**

## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 *General entitlement*

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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##### 21 *Review by Scottish public authority*

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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