



Scottish Information  
Commissioner  
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# Decision Notice 060/2025

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## Nursery school food provision – failure to respond

Applicant: The Applicant

Authority: Dundee City Council

Case Ref: 202401593

### Summary

The Applicant asked the Authority for various information about changes to the food provided to children attending a specified nursery. This decision finds that the Authority failed to respond to the request and requirement 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 26 September 2024.
2. Although the Applicant received an acknowledgement, he did not receive a response to his request.
3. On 19 November 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. Although the Applicant received an acknowledgement, he did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 4 December 2024, stating that he was 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 21 January 2025.
8. The Commissioner received submissions from the Authority.
9. The Authority acknowledged that it had failed to respond to the Applicant's request and requirement for review within the timescale allowed.
10. The Authority provided the Commissioner with evidence that it had issued its response to the Applicant's request by email on 22 November 2024. However, the Applicant did not receive the response as the Authority addressed it to the wrong email address. The Authority reissued its response on 4 February 2025 and the Applicant confirmed receipt.
11. The Authority also explained that its delay in responding to the Applicant's requirement for review was due to this being forwarded to senior management within its Education department, rather than to its FOI team. The Authority concluded that further training was required for staff regarding the procedure to follow when requirements for review are received.
12. 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.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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 Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
16. Given that the Authority reissued its response to the Applicant's request (which, in the circumstances, he accepts can be treated as the Authority's review outcome) on 4 February 2025, the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the Authority has apologised to the Applicant for its failure to comply.

## 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 Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 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 action.

## **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.

**Nick Murton**  
**Freedom of Information Officer**

**5 March 2025**