

Decision Notice 010/2021

Maintenance records – failure to respond

Applicant: The Applicant

Public authority: Williamsburgh Housing Association Ltd

Case Ref: 202001316



Scottish Information
Commissioner

Summary

The Applicant asked Williamsburgh Housing Association Ltd (WHA) for information about the full maintenance history for a specific address for the last five years. This decision finds that WHA failed to comply with the Applicant's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

1. On 10 January 2020, the Applicant made an information request to WHA
2. WHA responded to the information request on 11 February 2020.
3. On 11 March 2020, the Applicant wrote to WHA requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 3 November 2020 the Applicant wrote to the Commissioner, stating that he was dissatisfied with WHA's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The Commissioner exercised his discretion under section 47(5) of FOISA, to accept an application made outwith the time allowed by section 47(4)
6. On 18 December 2020, WHA was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from WHA. These submissions are considered below.

Commissioner's analysis and findings

8. The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 ("the Order") extended the coverage of FOISA to certain persons, in relation to certain specified functions. WHA is a registered social landlord covered by the Order and the request relates to functions also covered by the Order. WHA provided submissions which appeared to acknowledge that it was obliged to respond to the request under FOISA.
9. In its submissions to the Commissioner, WHA accepted that it had not provided a direct reply to the Applicant's requirement for review and apologised for this. It stated that the requirement had been overlooked, rather than the failure being a deliberate course of action.
10. WHA also outlined its current relationship with the Applicant, which it stated had resulted in WHA stopping corresponding with him.
11. 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.
12. It is a matter of fact that WHA 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.

13. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in responding to a requirement for review. As none of the appropriate actions have been taken in this case, the Commissioner finds that WHA failed to discharge these requirements: he now requires a response to be given to the Applicant, in accordance with section 21.
14. The Commissioner notes the circumstances WHA described in its submissions but, as a Scottish public authority dealing with a request covered by the Order, it is bound to fulfil its obligations under FOISA. Even if it does not consider itself required to carry out a review, there are still obligations to be fulfilled under section 21 (including the provision of a response in some form).
15. The Commissioner recommends that WHA considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that Williamsburgh Housing Association Ltd (WHA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, WHA failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires WHA to provide the Applicant with a response to his requirement for review, by **12 March 2021**.

Appeal

Should either the Applicant or WHA 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 WHA fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that WHA has failed to comply. The Court has the right to inquire into the matter and may deal with WHA as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

26 January 2021

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