

Decision Notice

Decision 061/2018: Mx Laurel Bush and Highland Council

Meaning of terms on a gas safety certificate: failure to respond within statutory timescales

Reference No: 201800420

Decision Date: 24 April 2018



Scottish Information
Commissioner

Summary

Highland Council (the Council) was asked about the meaning of specific terms on a gas safety certificate.

This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Mx Bush's requirement for review within the timescale set down by FOISA.

The Council has now responded to the requirement for review, therefore the Commissioner does not require the Council to take any action.

Background

Date	Action
14 December 2017	Mx Bush made an information request to the Council.
	The Council did not respond to the information request.
22 January 2018	Mx Bush wrote to the Council requiring a review of its failure to respond.
	Mx Bush did not receive a response to the requirement for review.
1 March 2018	Mx Bush wrote to the Commissioner's Office, expressing dissatisfaction with the Council's failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
26 February 2018	The Council responded to the requirement for review. Mx Bush received this response on 3 March 2018.
9 April 2018	The Council was notified in writing that an application had been received from Mx Bush and was invited to comment on the application.
23 April 2018	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. 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.
2. It is a matter of fact that the Council did not provide a response to Mx Bush's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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.

4. The Council explained to the Commissioner that when it searched its systems for Mx Bush's correspondence in relation to a previous request that had resulted in *Decision 044/2018: Mx Laurel Bush and Highland Council*¹, it had found Mx Bush's requirement for review dated 22 February 2018, which had been logged as information request.
5. The Council commented that it had responded on the same day the requirement for review was identified, and had apologised to Mx Bush for its delayed response. The Council said it had reminded its staff that review requests must be forwarded to the FOI team.
6. The Commissioner notes the Council's comments, but it is a matter of fact that the Council did not provide a response to Mx Bush's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The Council responded to Mx Bush's requirement for review on 26 February 2018, so the Commissioner does not require it to take any further action in relation to Mx Bush's application.

Decision

The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mx Bush's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mx Bush's application, given that it has responded to the requirement for review.

Appeal

Should either Mx Bush 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.

Alison Davies
Deputy Head of Enforcement

24 April 2018

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2018/201800122.aspx>

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