

Decision Notice 139/2020

Equality duty – failure to respond

The Applicant

Public authority: Dumfries and Galloway Council

Case Ref: 202001036



Scottish Information
Commissioner

Summary

The Applicant asked Dumfries and Galloway Council (the Council) for information about legal claims related to the Equality Act 2010. This decision finds that the Council failed to comply with the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

1. The Applicant made an information request to the Council on 2 June 2020.
2. The Council responded to the information request on 18 June 2020.
3. On 19 June 2020, the Applicant wrote to the Council requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 11 September 2020, the Applicant wrote to the Commissioner, 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
6. On 18 September 2020, the Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. In response, the Council acknowledged that it had failed to respond to the Applicant's request for review. The Council did not provide any further submissions.

Commissioner's analysis and findings

8. 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. It is a matter of fact that the Council 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.
9. 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: he now requires a review to be carried out in accordance with section 21.
10. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that Dumfries and Galloway Council (the Council) 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 Council failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA.

The Commissioner requires the Council to issue a review response by 21 December 2020.

Appeal

Should either the Applicant 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.

Claire Stephen
Deputy Head of Enforcement

4 November 2020

Scottish Information Commissioner

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