

Decision Notice

Decision 214/2018: Ms Samantha Kerr and West Lothian Council

Information about a specified incident: failure to respond within statutory timescales

Reference No: 201801883

Decision Date: 20 December 2018



Scottish Information
Commissioner

Summary

On 31 August 2018 and 3 September 2018, Ms Kerr asked West Lothian Council (the Council) for information regarding a specified incident. This decision finds that the Council failed to respond to the requests within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Ms Kerr's requirement for review within the timescale set down by FOISA.

Background

Date	Action
31 August 2018 and 3 September 2018	Ms Kerr made two separate information requests to the Council.
	The Council did not respond to either of these information requests.
6 October 2018	Ms Kerr wrote to the Council requiring a review of its decision in respect of its failure to respond to her requests.
	Ms Kerr did not receive a response to her requirement for review.
5 November 2018	Ms Kerr wrote to the Commissioner's Office, stating that she 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.
3 December 2018	The Council was notified in writing that an application had been received from Ms Kerr and was invited to comment on the application.
17 December 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 either of Ms Kerr's requests 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. It is a matter of fact that the Council did not provide a response to Ms Kerr's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. In its submissions, the Council acknowledged that it had received Ms Kerr's information requests and her requirement for review but the requests were not logged in the Council's central database, nor were they passed to the officer responsible for internal reviews. The Council noted that it had received a lot of correspondence from Ms Kerr and that the focus of the officers handling her correspondence had been on dealing with her issues of complaint. As a result, her information requests were overlooked.
6. The Council responded to Ms Kerr's requirement for review on 17 December 2018 and it apologised to Ms Kerr for its failures to comply with the timescales set out in FOISA. In light of this, the Commissioner does not require the Council to take any further action in relation to Ms Kerr's application.

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 requests made by Ms Kerr. In particular, the Council failed to respond to Ms Kerr's requests 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 Ms Kerr's application, given that it has now responded to her requirement for review.

Appeal

Should either Ms Kerr or West Lothian 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

20 December 2018

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