

Decision Notice

Decision 077/2019: Ms Samantha Kerr and West Lothian Council

Inter-agency discussion outcomes: failure to respond within statutory timescales

Reference No: 201900344

Decision Date: 13 May 2019



Scottish Information
Commissioner

Summary

West Lothian Council (the Council) was asked for various details relating to inter-agency discussion (IRD) outcomes. This decision finds that the Council comply with Ms Kerr's requirement for review within the timescale set down the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
23 December 2018	Ms Kerr made an information request to the Council.
22 January 2019	The Council responded to the information request.
26 January 2019	Ms Kerr wrote to the Council requiring a review of its decision.
20 February 2019	Although Ms Kerr received a review response, question 5 was not answered.
23 February 2019	Ms Kerr wrote to the Commissioner's Office, stating that she was dissatisfied with the Council's failure to respond to question 5 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10 April 2019	The Council was notified in writing that an application had been received from Ms Kerr and was invited to comment on the application.
24 April 2019	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council acknowledged that it failed to respond to Ms Kerr's requirement for review (in respect of question 5) within the required statutory timescale.
2. It explained Ms Kerr had submitted a large volume of requests for information over the last five months. It confirmed that it had taken steps to resolve the outstanding requests and set a timescale for responding to them.
3. The Council confirmed this request had been overlooked and had not been part of these discussions. It confirms a further meeting has been arranged to identify and address any further outstanding requests.
4. 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.
5. It is a matter of fact that the Council did not provide a review outcome for question 5 in Ms Kerr's information request within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

6. 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.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Ms Kerr for its failure to comply.

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 request made by Ms Kerr. In particular, the Council failed to respond fully to Ms Kerr's requirement for review within the timescales laid down by section 21(1) of FOISA.

The Commissioner requires the Council to respond to the requirement for review, in relation to question 5 in the original information request, by **Thursday 27 June 2019**.

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.

Enforcement

If West Lothian Council (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.

Euan McCulloch
Deputy Head of Enforcement

13 May 2019

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