

Decision Notice

Decision 143/2018: Mr Scott Robertson and East Lothian Council

Financial transactions relating to Musselburgh Athletic Football Club: failure to respond within statutory timescales

Reference No: 201801337

Decision Date: 20 September 2018



Scottish Information
Commissioner

Summary

On 29 May 2018, Mr Robertson asked East Lothian Council (the Council) for information about financial transactions relating to Musselburgh Athletic Football Club. 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 Mr Robertson's requirement for review within the timescale set down by FOISA.

Background

Date	Action
29 May 2018	Mr Robertson made an information request to the Council.
	The Council did not respond to the information request.
7 July 2018	Mr Robertson wrote to the Council requiring a review of its decision in respect of its failure to respond.
	Mr Robertson did not receive a response to his requirement for review.
9 August 2018	Mr Robertson wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10 August 2018	Mr Robertson wrote to the Commissioner's Office advising that he had received a late response dated 10 August 2018. He confirmed that the content of the response was satisfactory but requested an investigation into the Council's failure to respond within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).
4 September 2018	The Council was notified in writing that an application had been received from Mr Robertson and was invited to comment on the application. The Commissioner's Office also advised that it understood that Mr Robertson had received a late response dated 10 August 2018.
5 September 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 Mr Robertson'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. It is a matter of fact that the Council did not provide a response to Mr Robertson'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 response of 10 August 2018, the Council apologised to Mr Robertson for the delay, explaining that it was dealing with an increased number of Freedom of Information requests.
6. In its response to Mr Robertson, the Council advised him that if he is dissatisfied with the way his request has been dealt with he is entitled to seek a review of the Council's actions and decisions. The Commissioner notes that Mr Robertson had already made a request for a review on 7 July 2018. It follows that the Council was required to carry out a review and respond in terms of Section 21(4)(c) of FOISA (i.e. to reach a decision, where no decision had been reached). Instead, Mr Robertson was invited to submit a second requirement for review.
7. Consequently, the Commissioner finds that the Council failed to respond to Mr Robertson's request for review in accordance with section 21(4) of FOISA. It also failed to provide Mr Robertson with particulars about his right of application to the Commissioner and of his appeal rights in terms of sections 47(1) and 56 of FOISA, as required by section 21(10).

Decision

The Commissioner finds that East 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 Mr Robertson. In particular, the Council failed to respond to Mr Robertson's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA, and failed to comply with the requirements of section 21(4) and (10) when responding to his requirement for review.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Robertson's application, given that a review response has been issued.

Appeal

Should either Mr Robertson or East 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 East 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.

Alison Davies
Deputy Head of Enforcement

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