

Decision Notice

Decision 089/2019: Ms Samantha Kerr and West Lothian Council

West Lothian Social Work Department: failure to respond within statutory timescales

Reference No: 201900396

Decision Date: 3 June 2019



Scottish Information
Commissioner

Summary

West Lothian Council (the Council) was asked for information about its Social Work service. This decision finds that the Council failed to send its response to the correct “What Do They Know” email address.

Therefore, the response did not reach the applicant within the timescale required by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
5 December 2018	Ms Kerr made an information request to the Council.
10 December 2018	Although the Council attempted to respond to the information request, Ms Kerr did not receive a copy of it at that time.
9 January 2019 (repeated on 4 February 2019)	Ms Kerr wrote to the Council, requiring a review in respect of its failure to respond.
27 February 2019	The Council responded to Ms Kerr’s requirement for review, claiming that a response had been issued to her on 10 December 2018.
3 March 2019	Ms Kerr wrote to the Commissioner’s Office, stating that she was dissatisfied with what she identified as the Council’s failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
30 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.
1 May 2019	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner’s analysis and findings

1. The Council explained that it had issued a response to Ms Kerr’s information request on 10 December 2018, but had now established that the response had been sent to the wrong “What Do They Know” email address.
2. The Council rectified this mistake on 30 April 2019, attaching the response to the correct email address.
3. 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.

4. Although the Council attempted to respond on 10 December 2018, Ms Kerr did not receive a copy of this response. Therefore, the Council did not provide a response to Ms Kerr's request for information within 20 working days and the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. The Council provided Ms Kerr with a revised review outcome on 1 May 2019, upholding her appeal regarding its failure to respond.
6. 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.
7. 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.
8. The Commissioner notes that the Council apologised to Ms Kerr for the error in posting its initial response to the wrong "What Do They Know" email address. He also notes that this is not the first time this has happened and would urge the Council to take care in future to avoid a further recurrence.

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 to Ms Kerr'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 Ms Kerr's application, given that a response and a revised review outcome have now been sent to the correct "What Do They Know" email address.

Appeal

Should either Ms Kerr 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.

Euan McCulloch
Deputy Head of Enforcement

3 June 2019

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