

Decision Notice

Decision 031/2019: Mr B and the Scottish Housing Regulator

**Southside Housing Association and Berryknowes Road/ Mossheights Avenue:
failure to respond within statutory timescales**

Reference No: 201900181
Decision Date: 05 March 2019



Scottish Information
Commissioner

Summary

On 21 December 2018, Mr B asked the Scottish Housing Regulator (the SHR) for information about Southside Housing Association and Berryknowes Road/Mossheights Avenue, Glasgow. This decision finds that the SHR 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 SHR failed to comply with Mr B's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
21 December 2018	Mr B made an information request to the SHR.
21 December 2018	The SHR wrote to Mr B's, reiterating earlier statements that it would not be responding to further correspondence on the subject matter of his request, in line with its unacceptable actions policy. It stated that Mr B's rights under FOISA (and the Environmental Information (Scotland) Regulations 2004 – the EIRs) were unaffected by this stance, if he wished to make requests on unrelated issues, but made no reference to FOISA or the EIRs in the context of the 21 December request..
23 December 2018	Mr B wrote to the SHR, requiring a review in respect of its failure to respond to his request of 21 December 2018.
	Mr B did not receive a response to his requirement for review.
29 January 2019	Mr B wrote to the Commissioner's Office, stating that he was dissatisfied with the SHR's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
20 February 2019	The SHR was notified in writing that an application had been received from Mr B and was invited to comment on the application.
22 February 2019	The Commissioner received submissions from the SHR. 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 SHR did not provide a response to the Mr B'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 SHR did not provide a response to Mr B's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. 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 SHR failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
6. The Commissioner recommends that the SHR considers whether it would be appropriate to apologise to Mr B for its failure to comply. He would remind it that the application of a general "unacceptable actions" policy will not absolve a Scottish public authority of the requirement to comply with specific provisions of FOISA (and, where appropriate, the EIRs).

Decision

The Commissioner finds that the SHR failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr B. In particular, the SHR failed to respond to Mr Bs' request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the SHR to provide a review, by **19 April 2019**.

Appeal

Should either Mr B or the SHR 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 SHR fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SHR has failed to comply. The Court has the right to inquire into the matter and may deal with the SHR as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

05 March 2019

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info