

# Decision Notice

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**Decision 044/2019: Mr F and East Lothian Council**

**Rent arrears from 2013 to 2018: failure to respond within statutory timescales**

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Reference No: 201900045

Decision Date: 14 March 2019



Scottish Information  
Commissioner

## Summary

On 9 November 2019, Mr F asked East Lothian Council (the Council) for information about rent arrears from 2013 to 2018. 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 F's requirement for review within the timescale set down by FOISA.

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

## Background

Date	Action
9 November 2018	Mr F made an information request to the Council.
	The Council did not respond to the information request.
21 December 2018	Mr F wrote to the Council asking when he was likely to receive a response, stating that he was <u>not</u> requesting a review at this time.
21 December 2018	The Council carried out a review, on the basis that it was obliged to do this in response to Mr F's email of 21 December 2018, and communicated the outcome to Mr F.
28 December 2018	Mr F requested a review, as he was not satisfied with the response he had received.
3 January 2019	The Council wrote to Mr F, informing him again that it considered itself obliged to treat his email of 21 December 2018 as a requirement for a review. He was also informed that he should apply to the Commissioner if he was dissatisfied with the review outcome.
8 January 2019	Mr F wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's initial handling of his request and its failure to respond to his requirement for review, applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 February 2019	The Council was notified in writing that an application had been received from Mr F and was invited to comment on the application.
28 February 2019	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 F's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. On 21 December 2018, as he had not received a response to his request within 20 working days, Mr F asked the Council for a progress report, stating that he was not asking for a review at that time.
4. The Council then carried out a review and communicated the outcome to Mr F on 21 December 2018.
5. In its submissions, the Council advised that it believed any follow-up to an overdue response, regardless of the wording, should be treated as a request for a review. Usually, the Commissioner would agree: if a public authority fails to respond to a request within 20 working days and the applicant then writes expressing dissatisfaction with that failure, generally, that communication should be treated as a requirement for review.
6. In this case, however, unusually, Mr F stated quite explicitly that he was not asking for a review: a communication in those terms cannot be treated as a requirement for review. The response of 21 December 2018 could only be a response to the original request.
7. Then, on 28 December 2018, Mr F asked the Council to review its decision of 21 December 2018. As it considered it had carried out a review already and communicated the outcome to him, the Council informed Mr F that his next step was to appeal to the Commissioner. In these relatively unusual circumstances, this was not the correct guidance to give. It was obliged to respond to Mr F's requirement for review.
8. 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.
9. It is a matter of fact that the Council did not provide a response to Mr F's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
10. 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.
11. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr F for its failure to comply.

## Decision

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The Commissioner finds that 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 F. In particular, the Council failed to respond to Mr F's 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 Council to carry out a review and communicate the outcome to Mr F, by **29 April 2019**.

## **Appeal**

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Should either Mr F 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**

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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**

**14 March 2019**

**Scottish Information Commissioner**

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