

# Decision Notice

---

**Decision 075/2019: Ms Samantha Kerr and West Lothian Council**

---

**Information rights concerns: failure to respond within statutory timescales**

Reference No: 201900576

Decision Date: 13 May 2019



Scottish Information  
Commissioner

## Summary

West Lothian Council (the Council) was asked for information about social work assessments and related information management concerns. This decision finds that the Council failed to respond to the request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

## Background

Date	Action
16 December 2018	Ms Kerr made an information request to the Council.
16 December 2018	Although Ms Kerr received an acknowledgement, she did not receive a response to her information request.
21 January 2019	Ms Kerr wrote to the Council, requiring a review of in respect of its failure to respond.
21 January 2019	Again, although Ms Kerr received an acknowledgement, she did not receive a response to her requirement for review.
28 March 2019	Ms Kerr received an update, confirming that a response would be issued soon.
29 March 2019	Ms Kerr wrote to the Commissioner's Office, stating that she 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.
3 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.
16 April 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 Ms Kerr'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 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.
5. The Council acknowledged that it had received Ms Kerr's information request and requirement for review and confirmed that a response would be issued. The Commissioner notes that a response was issued on to Ms Kerr on 2 May 2019 (via the "whatdotheyknow" website).
6. As the Council responded to Ms Kerr's requirement for review on 2 May 2019, the Commissioner does not require it to take any further action in relation to Ms Kerr's application.
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 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 has now been issued.

## 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**13 May 2019**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**