

Decision Notice

Decision 179/2018: Mr C and East Renfrewshire Council

School Enrolment: failure to respond within statutory timescales

Reference No: 201801436

Decision Date: 07 November 2018



Scottish Information
Commissioner

Summary

East Renfrewshire Council (the Council) was asked for information about a specified primary school. In particular, Mr C wished to know the numbers of children from outwith the East Renfrewshire area enrolled at each stage of primary education there, details of which stages at primary level were full at the school in question and details of placing requests for each primary stage at the school.

This decision finds that the Council failed to respond to the request and subsequent request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
26 June 2018	Mr C made an information request to the Council.
25 July 2018	Mr C requested a review, on the basis that he had not received a response to his information request.
17 August 2018	The Council responded to the information request.
17 August 2018	Mr C wrote to the Council again, requiring a review of its decision.
17 August 2018	Although Mr C received an acknowledgement, he did not receive a response to his second requirement for review.
28 August 2018	Mr C wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 September 2018	After applying to the Commissioner, Mr C received the outcome of the Council's review. He informed the Council the same day that he had applied to the Commissioner for a decision about the late response and the fact that the Council did not appear to have a record of his first request for review.
14 September 2018	Following Mr C's notification about this, the Council provided the Commissioner's office with a copy of the review outcome dated 14 September 2018.
25 September 2018	Mr C confirmed to the Commissioner that he wanted the investigation to continue into the late response.
15 October 2018	The Council was notified in writing that an application had been received and was invited to comment on the application.
31 October 2018	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council acknowledged that it had failed to respond to Mr C's information request within the statutory timescales.
2. The Council also confirmed that it received the first request for review made on 25 July 2018. It explained that due to an administrative error, it was not passed onto the service dealing with reviews. Therefore, a review was not conducted at that time.
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. It is a matter of fact that the Council did not provide a response to Mr C's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. 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.
6. In terms of section 21(4)(c) of FOISA, all the Council was required to do in response to Mr C's first review request was to provide a response to his information request, none having been given at that point. However, from the Council's submissions it would appear that the (belated) response of 17 August 2018 was a result of the original request of 26 June 2018 and not the requirement for review of 25 July 2018. The Council acknowledges that the first review requirement was not addressed, so the Commissioner must find that, in this respect, the Council failed to comply with section 21(1) of FOISA.
7. Given that the Council responded to Mr C's second requirement for review on 14 September 2018, the Commissioner does not require it to take any further action in relation to Mr C's application.
8. The Commissioner notes that the Council apologised to Mr C for the delay in responding in its response of 17 August 2018.

Decision

The Commissioner finds that East Renfrewshire 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 C. In particular, the Council failed to respond to Mr C'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 Mr C's application, given that a response has since been issued.

Appeal

Should either Mr C or East Renfrewshire 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

07 November 2018

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