

Decision Notice

Decision 192/2018: Mr R and Fife Council

Retention Policy: failure to respond within statutory timescales

Reference No: 201801598

Decision Date: 22 November 2018



Scottish Information
Commissioner

Summary

Fife Council (the Council) was asked for a copy of its retention policy relating to maintenance records. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
9 July 2018	Mr R made an information request to the Council.
27 July 2018	The Council responded to the information request.
13 August 2018	Mr R wrote to the Council, requiring a review of its decision.
	Mr R did not receive a response to his requirement for review.
25 September 2018	Mr R 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.
29 October 2018	The Council was notified in writing that an application had been received from Mr R and was invited to comment on the application.
5 November 2018	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council confirmed that it had received Mr R's requirement for review. This was established after investigations were conducted by the Council's IT Department. The Council was not clear as to what happened to Mr R's email after it was received, and could only surmise it was overlooked.
2. 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. This is subject to qualifications which are not relevant in this case.
3. It is a matter of fact that the Council did not provide a response to Mr R's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
4. As the Council responded to Mr R's requirement for review on 1 November 2018 (the Commissioner was provided with a copy of this response), the Commissioner does not require it to take any further action in relation to Mr R's application.
5. The Commissioner notes that the Council apologised to Mr R for its failure to comply with his requirement for review within the statutory timescale, and also for the failure to provide adequate advice and assistance in locating the relevant policy.

Decision

The Commissioner finds that Fife 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 R. In particular, the Council failed to respond to Mr R's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mr R's application, given that a response has since been issued.

Appeal

Should either Mr R or Fife 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

22 November 2018

Scottish Information Commissioner

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