

Decision Notice

Decision 258/2016: Mrs X and South Lanarkshire Council

Alterations to the roofline of a building: failure to respond within statutory timescales

Reference No: 201601956

Decision Date: 5 December 2016



Scottish Information
Commissioner

Summary

South Lanarkshire Council (the Council) was asked for information about its decision to limit the work carried out on the roofline of a building. This decision finds that the Council failed to respond to the request for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
18 March 2016	Mrs X made an information request to the Council.
20 April 2016	The Council responded to the information request.
7 June 2016	Mrs X wrote to the Council requiring a review of its decision. (It is her request for a review of the Council's response to part 3 of her request (request 3) which is relevant, in terms of this decision notice.)
13 June 2016	The Council acknowledged Mrs X's request for review, but it notified her that its review panel would not conduct a review of its handling of request 3.
27 October 2016	Mrs X wrote to the Commissioner's Office, stating that she 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.
3 November 2016	The Council was notified in writing that an application had been received from Mrs X and was invited to comment on the application.
17 November 2016	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. 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. It is a matter of fact that the Council did not provide a response to Mrs X's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
2. The remainder of section 21 set 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.
3. The Council explained that Mrs X had made several requests for information in her email of 18 March 2016, including the part of her request being considered in this application (request 3). The Council did not consider that Mrs X had sought a review of its handling of request 3 and it notified her of this in its letter of 13 June 2016. The Council maintained that Mrs X had expressed no dissatisfaction with the Council's position in subsequent correspondence. It

suggested that if the Commissioner reviewed all of the relevant correspondence, she would find it reasonable for the Council to conclude that Mrs X was not seeking a review of request 3.

4. The Commissioner has read all of the relevant correspondence in this case, and she disagrees with the Council's position. Mrs X made it clear that she was dissatisfied with the Council's response because she was seeking information relating to its "decision not to carry out the roofline extension works within the HEEPS funding". Her email of 7 June 2016 clearly expressed dissatisfaction with the Council's handling of request 3 and it constituted a valid requirement for review. The Council should have recognised it as such and carried out a review in line with section 21(4) of FOISA.
5. The Commissioner now requires the Council to carry out a review of its response to request 3 in accordance with section 21 of FOISA.
6. In the circumstances, the Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mrs X for its failure to carry out a review.

Decision

The Commissioner finds that South Lanarkshire 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 Mrs X. In particular, the Council failed to respond to Mrs X's requirement for review (in relation to request 3) within the timescales laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide Mrs X with a review of its response to request 3 by **19 January 2017**.

Appeal

Should either Mrs X or South Lanarkshire 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

If South Lanarkshire 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.

Alison Davies
Deputy Head of Enforcement

5 December 2016

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