

Decision Notice

Decision 191/2016: Mr Martin Flanagan and East Dunbartonshire Council

Lennoxton Initiative: Failure to respond within statutory timescales

Reference No: 201601428

Decision Date: 14 September 2016



Scottish Information
Commissioner

Summary

On 24 May 2016, Mr Flanagan asked the Council for information relating to the Lennoxtown Initiative. This decision finds that the Council failed to comply with Mr Flanagan'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
24 May 2016	Mr Flanagan made an information request to the Council.
20 June 2016	The Council responded to the information request.
21 June 2016	Mr Flanagan wrote to the Council, requiring a review of its decision. Mr Flanagan did not receive a response to his requirement for review.
12 August 2016	Mr Flanagan 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.
18 August 2016	The Council was notified in writing that an application had been received from Mr Flanagan and was invited to comment on the application.
5 September 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.
2. It is a matter of fact that the Council did not provide a response to Mr Flanagan's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
3. 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: she now requires a review to be carried out in accordance with section 21.
4. The Council acknowledged that it had breached section 21 of FOISA in not responding to Mr Flanagan's review requirement. It advised the Commissioner that it had now drawn up procedural changes, with a revision to its tracking database, to allow a clearer monitoring of

internal reviews. The Council stated that it would issue a full review response to Mr Flanagan very shortly.

Decision

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 Flanagan. In particular, the Council failed to respond to Mr Flanagan's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Mr Flanagan's review requirement, by 26 October 2016.

Appeal

Should either Mr Flanagan or East Dunbartonshire 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 East Dunbartonshire 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 September 2016

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info