

# Decision Notice

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**Decision 254/2016: Mr A and East Ayrshire Council**

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**Award of a Contract: failure to respond within statutory timescales**

Reference No: 201601870

Decision Date: 24 November 2016



Scottish Information  
Commissioner

## Summary

East Ayrshire Council (the Council) was asked about the award of a contract to the Blue Triangle Housing Association. 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
19 April 2016	Mr A made an information request to the Council.
1 June 2016	The Council responded to the information request.
1 June 2016	Mr A wrote to the Council requiring a review of its decision.
3 June 2016	The Council acknowledged receipt, but did not respond to his requirement for review.
13 October 2016	Mr A 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.
20 October 2016	Mr A notified the Commissioner that the Council responded to him on 19 October 2016, but that he still wanted an investigation to be carried out.
25 October 2016	The Council was notified in writing that an application had been received from Mr A and was invited to comment on the application.
4, 10 and 21 November 2016	The Commissioner received submissions from the Council. These submissions are summarised below.

## Commissioner's analysis and findings

1. In response to her letter of 25 October 2016, the Council told the Commissioner that it had not treated Mr A's email of 1 June as a request for review. It took the view that Mr A was expressing dissatisfaction with the underlying issue, rather than with the way his information request had been handled and, as such, it was not a valid request for review. The Commissioner disagreed, noting that Mr A had raised a number of areas of dissatisfaction which were clearly with the way his request had been handled.
2. 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.
3. It is a matter of fact that the Council did not provide a response to Mr A's request for information within 20 working days. However, this issue was not raised by Mr A in his application, so the Commissioner cannot make a formal finding about the Council's compliance with section 10(1) of FOISA.

4. 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.
5. It is a matter of fact that the Council did not provide a response to Mr A's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. As the Council responded to Mr A's requirement for review on 19 October 2016, the Commissioner does not require it to take any further action in relation to Mr A's application.
7. The Commissioner notes that the Council apologised to A for its failure to respond in time.

## Decision

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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 A. In particular, the Council failed to respond to Mr A'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 these failures, in response to Mr A's application, given that a response was issued.

## Appeal

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Should either Mr A or East Ayrshire 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.

**Margaret Keyse**  
**Head of Enforcement**

**24 November 2016**

**Scottish Information Commissioner**

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