



Scottish Information
Commissioner
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Decision Notice 178/2025

Direct payments and the employment status of personal assistants – failure to respond

Applicant: The Applicant

Authority: City of Edinburgh Council

Case Ref: 202500092

Summary

The Applicant asked the Authority for various information related to direct payments and the employment status of personal assistants. This decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 18 July 2024.
2. The Authority responded to the information request on 21 August 2024.
3. Later that day, the Applicant wrote to the Authority requiring a review of its decision. The Applicant's requirement for review also contained a new information request.
4. On 20 September 2024, the Authority informed the Applicant that it proposed to "close" their requirement for review related to their request dated 18 July 2024. The Authority said that it would instead respond to these points as part of its response to a different, but related, information request made by the Applicant.
5. On 13 January 2025, the Applicant wrote to the Commissioner, stating that they were dissatisfied with the Authority's failure to respond to respond their requirement for a review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. Specifically, the Applicant stated that they were dissatisfied with the following:
 - the Authority had failed to issue a review outcome to their requirement for review related to their request dated 18 July 2024

- the Authority had instead issued a “merged” response relating to two separate requests when they had not agreed to, or asked for, this
 - the Authority’s handling of these requests had made matters “difficult to follow”.
7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

8. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 5 March 2025.
9. The Commissioner received submissions from the Authority. These submissions are considered below.
10. The Authority explained that it had determined that it was appropriate to “close” the Applicant’s requirement for review related to their information request dated 18 July 2024 and to instead respond to these points as part of its response to a different, but related information request. The Authority said that it did so as the Applicant had raised “new” points, along with points that it had previously responded to.
11. However, having reviewed the matter, the Authority concluded that parts of the Applicant’s email dated 21 August 2024 should have been processed as a requirement for review of their information request dated 18 July 2024. The Commissioner agrees.
12. 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.
13. It is a matter of fact that the Authority did not provide a response to the Applicant’s requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. 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 Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
15. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply and for the confusion its handling of the request caused.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant’s requirement for review within the timescale laid down by section 21(1) of FOISA. The Commissioner requires the Authority to issue a response to the Applicant’s requirement for review, by **25 August 2025**.

Appeal

Should either the Applicant or the Authority 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 the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Cal Richardson
Deputy Head of Enforcement

9 July 2025