

# Decision Notice

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**Decision 079/2017: Ms Angela Gilmour and Stirling Council**

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**Voluntary Severance processes: failure to respond within statutory timescales**

Reference No: 201700456

Decision Date: 19 May 2017



Scottish Information  
Commissioner

## Summary

On 29 November 2016, Ms Gilmour asked the Council for information about a Voluntary Severance exercise conducted during 2016-17. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Ms Gilmour's requirement for review within the timescale set down by FOISA.

The Commissioner ordered the Council to comply with the requirement for review.

## Background

| Date             | Action   |
|------------------|--|
| 29 November 2016 | Ms Gilmour made an information request to Stirling Council (the Council).  |
| 5 January 2017   | The Council responded to the information request.  |
| 7 January 2017   | Ms Gilmour made a new information request to the Council.  |
| 30 January 2017  | The Council responded to the new information request.  |
| 3 February 2017  | Ms Gilmour wrote to the Council, requiring a review of both responses.   |
|                  | Ms Gilmour did not receive a response to her requirement for review.   |
| 9 March 2017     | Ms Gilmour 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. |
| 20 March 2017    | The Council was notified in writing that an application had been received from Ms Gilmour and was invited to comment on the application.   |
| 5 May 2017       | The Commissioner received submissions from the Council. These submissions are considered below.  |

## Commissioner's analysis and findings

1. When contacted by the Commissioner, the Council acknowledged that it had failed to provide a response to Ms Gilmour's requirement for review. It explained that significant delays in responding to the requirement for review were attributable to temporary capacity issues (vacancy for a permanent post) coinciding with an unusually high volume of requests.
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 Ms Gilmour's request for information (of 29 November 2016) within 20 working days, so the Commissioner finds that it failed to comply 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 Ms Gilmour's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. 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.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Ms Gilmour for its failure to comply.
8. The Commissioner notes that the Council has agreed to arrange temporary cover for this area, until such a time as a permanent member of staff can be appointed.

## Decision

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The Commissioner finds that Stirling 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 Ms Gilmour. In particular, the Council failed to respond to Ms Gilmour's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Ms Gilmour's requirement for review, by **Friday 7 July 2017**.

## Appeal

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Should either Ms Gilmour or Stirling 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

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If Stirling Council (the 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**

**19 May 2017**

**Scottish Information Commissioner**

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