

# Decision Notice

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## **Decision 101/2018: Mr Sergio Sabato and Highland Council**

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**Recruitment processes / House in Multiple Occupation licence (HMO): Failure to respond within statutory timescales**

Reference No: 201800783

Decision Date: 9 July 2018



Scottish Information  
Commissioner

## Summary

Highland Council (the Council) was asked for information about a number of issues, including its recruitment process (in relation to conflicts of interest) and when new licence conditions for Houses in Multiple Occupation (HMOs) were introduced. 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 provide Mr Sabato with the appropriate information about his rights of appeal.

## Background

Date	Action
4 February 2018	Mr Sabato made an information request to the Council.
	The Council did not respond to the information request.
6 March 2018	Mr Sabato wrote to the Council requiring a review of its failure to respond.
5 April 2018	Mr Sabato received a response to his request, inviting him to submit a second requirement for review.
8 April 2018	Mr Sabato submitted a second requirement for review.
9 May 2018	The Council responded to Mr Sabato's requirement for review
	Mr Sabato wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond to his request for review in time and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15 June 2018	The Council was notified in writing that an application had been received from Mr Sabato and was invited to comment on the application.
28 June 2018	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

1. 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
2. It is a matter of fact that the Council did not provide a response to Mr Sabato's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. The Commissioner notes that Mr Sabato made a request for review on 6 March 2018. It follows that the Council's response should have been to carry out a review and respond in terms of section 21(4)(c) of FOISA (i.e. to reach a decision, where no decision had been

reached). However, the response provided to Mr Sabato on 5 April 2018 invited Mr Sabato to seek a review if dissatisfied.

4. Mr Sabato should have been advised of his right to apply to the Commissioner, rather than invited to submit a second requirement for review. Consequently, the Commissioner finds that the Council failed to respond to Mr Sabato's request for review in accordance with section 21(4) of FOISA and failed to provide Mr Sabato with particulars about his right of application to the Commissioner and of his appeal rights in terms of section 47(1) and 56 of FOISA, as required by section 21(10).
5. Following the Council's response of 5 April 2018, Mr Sabato asked for another review on 8 April 2018. The Council carried out a (second) review on 9 May 2018.
6. The Council accepts that the procedure it followed was incorrect. It stated that staff have been reminded of this in the past, but a reminder will be sent again to all of the Council's customer service officers regarding the correct procedure. The Council also explained that the reason for the delay relating to the review response of 9 May 2018 was an error when the case was logged on its system.
7. 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.
8. It is a matter of fact that the Council did not provide a response to Mr Sabato's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
9. The Council has apologised to the Commissioner for these failures, and the Commissioner recommends that the Council considers whether it would also be appropriate to apologise to Mr Sabato.

## Decision

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The Commissioner finds that Highland 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 Mr Sabato.

The Council failed to respond to Mr Sabato's request within 20 working days. In doing so, it failed to comply with section 10(1) of FOISA.

The Council also failed to respond to Mr Sabato's requirement for review in terms of section 21(4)(c). It failed to provide particulars about his right of application to the Commissioner and of his appeal rights in terms of sections 47(1) and 56 of FOISA, as required by section 21(10).

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Sabato's application, given that it has stated that a reminder will be issued to staff on the correct procedure to follow.

## **Appeal**

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Should either Mr Sabato or Highland 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.

**Alison Davies**  
**Deputy Head of Enforcement**

**9 July 2018**

**Scottish Information Commissioner**

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