

# Decision Notice 007/2020

---

## Care agreements for looked after children: failure to respond

---

**Applicant: The Applicant**

**Public authority: Dumfries and Galloway Council**

**Case Ref: 201902179**



Scottish Information  
Commissioner



## Summary

On 30 August 2019, the Applicant asked Dumfries and Galloway Council (the Council) for information about informal residence, special guardian and kinship care agreements. This decision finds that the Council failed to respond to comply with the applicant's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

## Background

Date	Action
30 August 2019	The Applicant made an information request to the Council.
18 September 2019	The Council responded to the information request.
24 September 2019	The Applicant wrote to the Council, requiring a review of its decision.
	The Applicant did not receive a response to her requirement for review.
26 November 2019	The Applicant 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.
3 December 2019	The Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
13 January 2020	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

1. The Council accepted that it had failed to respond to the Applicant's requirement for review and confirmed a review would be undertaken.
2. 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.
3. It is a matter of fact that the Council 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.
4. 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: he now requires a review to be carried out in accordance with section 21.
5. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

## Decision

---

The Commissioner finds that Dumfries and Galloway 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 the Applicant. In particular, the Council 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 Council to respond to the Applicant's requirement for review, by **Monday 2 March 2020**.

## Appeal

---

Should either the Applicant or the 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 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**

**16 January 2020**



**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**