

# Decision Notice 054/2020

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## Housing applications

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**Applicant: The Applicant**

**Public authority: Falkirk Council**

**Case Ref: 202000235**



Scottish Information  
Commissioner



## Summary

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The Council was asked for information regarding current *applicants* for specified housing accommodation with care level 1. The Council provided some information relating to current *residents*.

The Commissioner investigated and found that the Council had failed to comply with FOISA in responding to the request. This was because the response did not relate to current applications, as requested by the Applicant. The Commissioner required the Council to respond to the Applicant's request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement); 21(1) and (4)(c) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 15 November 2019, the Applicant made a request for information to Falkirk Council (the Council). She asked for details relating to current applicants for specified housing accommodation with care level 1. She confirmed she wished to know the ioRN2 score; score award date and application date.
2. On 26 November 2019, the Council responded and provided some information relating to the current residents of the specified accommodation. It advised that some information was being withheld as personal information.
3. On 28 November 2019, the Applicant wrote to the Council and asked it to conduct a review, on the basis that the response provided related to current residents (which had been subject of a separate request) when, in this case, she had asked about current applicants.
4. The Council notified the Applicant of the outcome of its review on 16 December 2019. The Council provided further information regarding current residents, again advising that some information was being withheld as personal information. It was unclear whether this response related to the Applicant's review request of 28 November 2019, or the review request she had made in relation to the separate request for information relating to current residents.
5. On 9 January 2020, the Applicant applied to the Commissioner for a decision, submitting that the Council had failed to provide her with a review outcome.
6. On 10 February 2020, the Council wrote to the Applicant and advised her that it considered its response of 16 December 2019 to be a response to her requirement for review of 28 November 2019.
7. On 15 February 2020, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the

Council's review because it had not responded to her request for information regarding current applications.

## Investigation

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8. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
9. On 18 February 2020, the Council was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions, focusing on whether it had responded properly to the request of 15 November 2019.
11. During the investigation, the Council accepted that, although it responded to the Applicant's request of 15 November 2019, this had been in relation to current residents and not current applications, as had been requested by the Applicant. It accepted therefore that it had not provided the Applicant with a substantive response to her request of 15 November 2019.
12. The Council further advised the Commissioner that it proposed to provide the Applicant with a substantive response, along with an apology, by 18 March 2020.

## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

### Response issued by the Council

14. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it.
15. In its submissions to the Commissioner, the Council accepted that it had not responded to the Applicant's specific request for information relating to current applicants and agreed to issue a substantive review outcome during the investigation, responding to the specific terms of the Applicant's request. It hoped to do so by 18 March 2020.
16. It is apparent that the Applicant had sought specific information relating to the current applicants (as at the date of the request) held by the Council in relation to the specific accommodation in question. It is also apparent that the responses provided by the Council related to a separate request for similar information, regarding current residents of the accommodation in question.
17. Although the Council initially stated that the response of 16 December 2019 was a response to the Applicant's requirement for review of 28 November 2019, it is apparent that this related to the separate request for information concerning the current residents of the accommodation in question, as explained above.

18. The Commissioner concludes that the Council did not respond to the specific terms of the Applicant's request when it responded to her request or her requirement for review. Therefore, the Commissioner finds that the Council failed to respond to the information request in line with section 1(1) of FOISA.
19. The Commissioner now requires the Council to respond to the specific terms of the Applicant's request. In other words, it must provide the Applicant with a new review outcome in response to her requirement for review of 28 November 2019, in accordance with section 21(4)(c) of FOISA (no response meeting the terms of the request having been provided previously).
20. The Commissioner's decision below states a compliance date of 1 May 2020, in line with the timescales he is required to follow in determining an application. This is the latest day on which the Council can issue a response, but it does not prevent the Council from issuing one sooner. The Commissioner would encourage the Council to provide the Applicant with a compliant response as soon as possible, noting its submission to him that it proposed to do so by 18 March 2020.

## Decision

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The Commissioner finds that, by not responding to the specific terms of the Applicant's request, Falkirk Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (and, in particular, with section 1(1)).

The Commissioner requires the Council to provide a response to the Applicant's requirement for review, in terms of section 21(4)(c) of FOISA, by **1 May 2020**.

## Appeal

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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

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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.

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

**17 March 2020**

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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#### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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- (4) The authority may, as respects the request for information to which the requirement relates-

...

- (c) reach a decision, where the complaint is that no decision had been reached.

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