

# Decision Notice



Decision 031/2013 Mr Frank Collins and East Dunbartonshire Council

Dealings with the Council

Reference No: 201202320

Decision Date: 26 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
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## Summary

Mr Collins asked East Dunbartonshire Council (the Council) for information on a number of unrelated topics. The Council informed Mr Collins that it did not hold any of the requested information and explained why.

Following an investigation, the Commissioner found that the Council had failed to respond to Mr Collins' request within the 20 working days set down by FOISA, but that it had been correct to notify him that it did not hold any information covered by his request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance); 17(1) (Information not held)

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

## Background

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1. In an undated letter received by the Council on 1 February 2012, Mr Collins requested the following information (amongst other requests which are not the subject of this decision):
  - a) CCTV footage on Sunday 22 January 2011 at a named location.
  - b) Who at the Council had provided information about Mr Collins to the Kirkintilloch Herald.
  - c) What happened to the money given to "Midge Repellant Man" (or company).
  - d) Copy of a form dated 6 July 2005.
2. The Council wrote to Mr Collins on 4 July 2012, summarising his requests and asking him for some clarification.
3. On 23 July 2012 Mr Collins responded to the Council's letter, providing some clarification in relation to requests b) and c).
4. Having heard nothing further from the Council, on 1 October 2012, Mr Collins wrote to the Council to request a review of the way it had dealt with his request.



5. The Council notified Mr Collins of the outcome of its review on 31 October 2012. The Council confirmed that it did not hold information covered by any part of Mr Collins' request.
6. On 8 November 2012, Mr Collins wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Collins had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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8. On 6 December 2012, the Council was notified in writing that an application had been received from Mr Collins and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was also asked to respond to specific questions regarding the nature and extent of the searches that it had carried out to determine whether it held any information which would address Mr Collins' requests.
9. The Council responded on 8 January 2013, providing detailed submissions in response to the investigating officer's letter.
10. Further submissions were sought and received from the Council during the course of the investigation.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Collins and the Council and is satisfied that no matter of relevance has been overlooked.

### **Does the Council hold information which would fulfil Mr Collins' requests?**

12. 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 certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).



*Request a) – CCTV footage*

13. The Council advised that it only keeps CCTV images for 30 days, after which the tapes are reused and the recordings are taped over.
14. The Commissioner notes that Mr Collins requested CCTV images from January 2011 in his request which was received by the Council on 1 February 2012. As there was a year between the date of the relevant CCTV image and Mr Collins' request for it, the Commissioner is satisfied that the relevant tape would have been overwritten and accepts that the Council did not hold this information at the date of Mr Collins' request.

*Request b) – information provided to the Kirkintilloch Herald*

15. In its submissions, the Council advised that it had contacted various Council departments to ascertain whether anyone had spoken to the Kirkintilloch Herald about Mr Collins' case, but the departmental representatives categorically denied that any of their officers had spoken to anyone at the newspaper. The Council noted that it would be completely unacceptable for any of its employees to discuss personal matters relating to a member of the public with a journalist.
16. The Council advised that in 2009 it had responded to a subject access request from Mr Collins under the Data Protection Act 1998. If recorded information relating to the alleged contact with the Kirkintilloch Herald had existed, it would have been disclosed to Mr Collins at this time.
17. The matter which is alleged to have been discussed with a journalist relates to transactions with Strathclyde Regional Council, so dates back at least 15 years. Taking this into consideration, and given the outcome of the enquiries carried out by the Council in relation to this matter, the Commissioner is satisfied that the Council does not hold any information covered by this part of Mr Collins' request.

*Request c) – money given to a midge repellent company*

18. The Council advised that in relation to this request it had checked with staff in several Council departments, but none were aware of the midge repellent business to which Mr Collins had referred. Council staff who are local to the area had also been asked if they had any knowledge of the company, but again no-one was aware of this business. The Council commented that a midge repellent company is a fairly unusual idea for a business, and one that would be likely to stick in the mind of any Council employees who had any involvement with it.
19. Having considered the submissions from the Council and additional searches undertaken during the investigation, the Commissioner is satisfied that the requested information was not held by the Council at the date of Mr Collins' request.



*Request d) – copy of a form*

20. The Council advised that if it had held the form in question, it would have been provided to Mr Collins in response to his 2009 subject access request, when copies of certain other forms had been sent to him. The Council reviewed its response to Mr Collins' former subject access request and, after consulting with the appropriate Service, it confirmed that it does not hold any of Mr Collins' forms for January or July 2005.
21. The Commissioner is satisfied with the extent of the Council's searches in relation to this request and accepts that the requested information was not held by the Council at the date of Mr Collins' request.

*Summary*

22. The Commissioner has considered the nature and extent of the searches carried out by the Council in relation to each of Mr Collins' requests, and is satisfied that these were thorough and proportionate and would, on the balance of probabilities, have identified any relevant recorded information falling within the scope of Mr Collins' requests had it been held.
23. The Commissioner is therefore satisfied that the Council does not (and did not at the time of receiving Mr Collins' requests) hold any recorded information which would fall within the scope of those requests. The Commissioner finds that the Council was correct to notify Mr Collins, in line with section 17(1) of FOISA, that it did not hold the information he had asked for.

**Timescales**

24. Section 10(1) of FOISA allows Scottish public authorities a maximum of 20 working days after receipt of a request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
25. Mr Collins submitted his information request by letter on 1 February 2012. The Council responded on 4 July 2012, some time outwith the 20 working days specified in section 10(1) of FOISA. The Council sought clarification of some of the 12 requests in Mr Collins' letter, and advised that, once clarification was received, it would provide answers as soon as possible and within 20 working days of receipt of that clarification. Mr Collins provided some clarification of requests b) and c) on 13 July 2012; however, he does not appear to have received any further response from the Council, and eventually asked for a review of its handling of his request on 1 October 2012.
26. In its submissions, the Council explained that due to administrative errors the request was not processed as it should have been. The Council explained since this occurrence, it has been working to improve the way requests are handled, and now monitors requests through weekly meetings to discuss any issues arising.
27. The Commissioner notes the Council's explanation, but finds that, in responding to Mr Collins' request, it failed to comply with the timescales required by section 10(1) of FOISA.



## **DECISION**

The Commissioner finds that East Dunbartonshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Collins.

The Commissioner finds that by notifying Mr Collins, in line with section 17(1) of FOISA, that it did not hold the requested information, the Council complied with Part 1 of FOISA.

However, in failing to provide a response to Mr Collins' request within 20 working days, the Commissioner finds that the Council failed to comply with section 10(1) of FOISA. The Commissioner does not require the Council to take any further action in response to this failure.

## **Appeal**

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Should either Mr Collins or East Dunbartonshire Council wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**26 February 2013**



## Appendix

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### Relevant statutory provisions

#### 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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- ...

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,



it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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