

# Decision Notice

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**Decision 035/2018: Mr A and Highland Council**

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**Lair and interment records: failure to respond within statutory timescales**

Reference No: 201800034

Decision Date: 12 March 2018



Scottish Information  
Commissioner

## Summary

The Council was asked for information about lair plans for the burial grounds at Abernethy churchyard / cemetery, plus interment records relating to a specific lair. 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 the requirement for review within the timescale set down by FOISA.

## Background

Date	Action
19 September 2017	Mr A made an information request to Highland Council (the Council).
	The Council did not respond to the information request.
6 November 2017	Mr A wrote to the Council, requiring a review of its failure to respond.
	Mr A did not receive a response to his requirement for review.
18 December 2017	Mr A wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
19 February 2018	The Council was notified in writing that an application had been received from Mr A and was invited to comment on the application.
26 February 2018 and 5 March 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. The Council explained that the staff member responsible had only recently moved into the role. While they had intended to seek advice on responding, they had not done so in time. The Council apologised for this error, confirming that the officer in question now understood the position.
3. It is a matter of fact that the Council did not provide a response to Mr A's request for information 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. In its submissions to the Commissioner, the Council confirmed it had received Mr A's requirement for review on 7 November 2017. It provided the Commissioner with a copy of its response to Mr A dated 14 December 2017 which, it explained, had been sent to Mr A's previous address, as detailed in his initial request. The Council explained that, in doing so, it had failed to notice that Mr A had moved address (as detailed in his requirement for review), and so its response was sent to the address given in the initial request.
6. The Council apologised for this administrative error, explaining in addition that there had been a breakdown in communication about who should issue the response and the required format. The Council explained that only a small number of staff were trained to carry out reviews and were aware of the relevant statutory requirements. The Council also explained a reduction in FOI staff resource, at that time, had impacted adversely on its administration and record-keeping in this area. The Council assured the Commissioner that appropriate staff cover was now in place and apologised for its poor handling of Mr A's request.
7. It is a matter of fact that the Council did not provide a response to Mr A's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
8. On 27 February 2018, the Council wrote to Mr A at his new address, providing him with a copy of its original response, and apologising for the poor handling of his request with an explanation for the delay.
9. The Commissioner notes that the Council has apologised to Mr A and has explained the reasons for the delay in responding. However, he is concerned to note that staffing issues – and inadequate understanding of roles and responsibilities amongst those staff who were there – contributed to these delays. While he welcomes the steps taken by the Council to ensure adequate staff resources are in place, he would also offer the following comments:
  - (i) While an authority may decide to have recognised staff whose specific remit is responding to information requests or requirements for review, the responsibility for responding under FOISA lies with the public authority itself, and not with individuals or departments within the authority.
  - (ii) It is clear from paragraphs of 1.2.3 to 1.2.5 in Part 2 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code<sup>1</sup>) that organisational responsibility for managing Freedom of Information includes ensuring that relevant staff are adequately trained and have the appropriate skills and knowledge to respond to requests. As a minimum, authorities must ensure that staff can recognise a request and are aware of any procedures for forwarding requests to staff who are able to answer them. Paragraph 10.1.1 sets out a similar expectation in relation to requirements for review.
  - (iii) The Section 60 Code also covers staff absence. Paragraph 1.4.1 states that authorities should have robust arrangements in place to ensure that staff absence (whether planned or un-planned) does not affect the authority's ability to respond to requests for information, and requirements for review, within statutory timescales. From the preceding section of the Code (1.3), it should be apparent that the authority must ensure all staff with responsibility for handling requests and

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<sup>1</sup> <https://beta.gov.scot/publications/foi-eir-section-60-code-of-practice/>

requirements for review, whether on a permanent or temporary basis, are appropriately trained to ensure that the relevant statutory requirements will be complied with.

- (iv) The Commissioner cannot stress enough the importance of having adequate training and contingency arrangements in place to ensure a public authority meets its statutory responsibilities under FOISA at all times, including when regular staff and other resources are not available.

## **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 A. In particular, the Council failed to respond to Mr A's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr A's application, given that it has now sent him a copy of its review outcome at his new address.

## **Appeal**

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Should either Mr A 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**12 March 2018**

**Scottish Information Commissioner**

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