

# Decision Notice



Decision 042/2011 Mr James Milligan and Glasgow City Council

Internal request for information

Reference No: 201002278

Decision Date: 3 March 2011

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr Milligan requested from Glasgow City Council (the Council) a copy of an internal request for certain information. The Council failed to respond initially, but appeared to confirm on review that the information was not held. Mr Milligan remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council did not hold the information requested. While finding a technical failure in the Council's handling of the request, he did not require the Council to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Timescale for compliance) and 17(1) (Notice that information is 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. On 10 September 2010, Mr Milligan wrote to the Council and referred to a letter of 26 June 2006 which had apparently been copied by the Council's Housing Benefits Office to the Council's Financial Services. Mr Milligan requested a copy of Financial Services' request to the Housing Benefits Office for a copy of this letter.
2. On 14 October 2010, Mr Milligan wrote to the Council requesting a review on the basis that no response had been received to his request.
3. The Council notified Mr Milligan of the outcome of its review on 20 October 2010. The Council stated that no written request had been made by Financial Service for a copy of the letter, although it also confirmed that it held the information he had requested.
4. On 3 December 2010, Mr Milligan 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.



5. The application was validated by establishing that Mr Milligan 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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6. On 14 December 2010, the investigating officer notified the Council in writing that an application had been received from Mr Milligan, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was asked to clarify its response to the request, and in particular to confirm whether it held the requested information and the steps it had taken to establish this.
7. A response was received from the Council. The relevant submissions obtained from Mr Milligan and the Council will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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

### Section 17(1) – Information not held

9. Section 17(1) of FOISA states that where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
10. The Council explained that its Financial Services Department of the Council included the Benefits Section and the Revenues Section. Correspondence addressed to either section would be scanned onto the Council's document imaging system against the relevant individual's account. It would then be accessible to staff in both sections and there would be no need for a written request to be made for access within either section. The Council explained that the letter would simply have been accessed on this basis. In any event, the relevant document management systems had been checked and no written request for the letter had been traced.
11. The Council also acknowledged that its initial confirmation that the information was held had been provided in error, and that it could have provided a more complete explanation of the breakdown of functions within the Revenues and Benefits sections.



12. Having considered the Council's submissions, the Commissioner accepts that the Council carried out adequate searches and enquiries to establish that it did not hold the information Mr Milligan had requested. Given the explanations provided by the Council, he accepts that there would be no reasonable expectation that such information should be held (although that could have been explained to Mr Milligan more clearly).

### Technical Issues

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
14. Mr Milligan's request for information was dated 10 September 2010. Given that the Council had not responded to the request by the time Mr Milligan requested a review on 14 October 2010, the Commissioner finds that the Council failed to respond to the request for information within the period required by section 10(1) of FOISA.
15. In correspondence with the Commissioner, the Council accepted that while it had processes in place to ensure that all requests for information were complied with according to the statutory timescales, these processes had not been followed in this instance. In the circumstances, the Commissioner does not require the Council to take any action regarding this particular failure.

### DECISION

While satisfied that City of Glasgow Council (the Council) did not hold the information requested by Mr Milligan, the Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr Milligan's information request, by failing to respond to the request within the period required by section 10(1) of FOISA. He does not require the Council to take any action in respect of this particular failure in response to Mr Milligan's application.

Decision 042/2011  
Mr James Milligan  
and Glasgow City Council



## Appeal

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Should either Mr Milligan or Glasgow City 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**  
**3 March 2011**



## 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
- (b) in a case where section 1(3) applies, the receipt by it of the further information.
- ...

##### 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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