



Scottish Information  
Commissioner

**Decision 051/2007 Mr John Lee and the City of Edinburgh  
Council**

***Failure to respond to request for review***

**Applicant: Mr John Lee  
Authority: City of Edinburgh Council  
Case No: 200601498  
Decision Date: 12 March 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
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## **Decision 051/2007 Mr John Lee and the City of Edinburgh Council**

### **Failure of the City of Edinburgh Council to respond to a request for review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002**

#### **Facts**

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1. On 20 January 2006 Mr Lee made a series of information requests to the City of Edinburgh Council (the Council). Mr Lee's seven questions related to the EH Key to choice website.
2. The Council acknowledged these requests and advised that they would be treated as requests under the Freedom of Information (Scotland) Act 2002 (FOISA) and had been passed to the relevant section to deal with. Mr Lee subsequently received a formal acknowledgement.
3. The Council responded substantively to Mr Lee's requests on 16 February 2006.
4. On 7 March 2006, Mr Lee wrote again to the Council. He indicated that he was not satisfied with the answers provided. He clarified the information he was seeking and made a series of 12 supplementary questions based on the responses he had received.
5. Mr Lee sent a reminder email to the Council on 9 April 2006.
6. On 13 April 2006 the Council provided responses to Mr Lee's further questions.
7. On 14 April 2006 Mr Lee wrote again to the Council. He expressed dissatisfaction with the information that had been supplied to him and requested a formal review.
8. Mr Lee did not receive a response to his request for review and on 14 September 2006 he applied to the Commissioner for a decision. Mr Lee expressed dissatisfaction with the responses the Council had supplied to him and with the failure of the Council to respond to his request for review.
9. On 3 October 2006 the Commissioner notified the Council of the application made by Mr Lee and invited their comments in terms of section 49(3)(a) of FOISA.



10. The Council responded to the Commissioner's letter on 18 October 2006. The Council advised that Mr Lee's request for review dated 14 April 2006 had been received by the Council's Housing Department and forwarded to the Council's Contact Centre on 24 April to be processed in accordance with the Council's adopted procedures for review. The Council advised that it was investigating why it had not been processed further. The Council apologised for the complete failure to carry out a review.
11. The Council confirmed that it was now carrying out a review and would issue a decision to Mr Lee as soon as possible.
12. In subsequent correspondence, the Council advised that it was apparently simple human error that led to the review not being processed. The Council explained that, unfortunately, the review request was not passed on to the review team for processing. The Council advised that staff had been re-trained to hopefully avoid any repetition of this and apologised again for the error.
13. The Council issued a review notice to Mr Lee on 28 November 2006. It apologised for the delay in processing his request for review and advised that due to an administrative error the review request had not been passed to the officer responsible for reviews.
14. Mr Lee asked the Commissioner to issue a decision on the Council's failure to respond to his request for review within 20 working days.

### **Commissioner's Analysis and Findings**

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15. Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a Decision Notice to both the applicant and the public authority.
16. The Commissioner is satisfied that Mr Lee made a series of requests for information to the Council on 20 January 2006 and again on 7 March 2006 which were valid under the terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 14 April 2006.
17. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with the request for information.



18. The Commissioner is satisfied that the Council did not respond to Mr Lee's second request for information within the timescale laid down in section 10(1) of FOISA.
19. Section 21(1) of FOISA gives the authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
20. The Commissioner is satisfied that the Council did not respond to Mr Lee's requirement for review within the timescale laid down under section 21(1) of FOISA.

## **Decision**

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The Commissioner finds that the City of Edinburgh Council (the Council) did not deal with Mr Lee's request for information in accordance with the requirements of Part 1 of FOISA in that the Council failed to comply with section 10(1) and section 21(1).

The Commissioner notes that the Council has now responded to Mr Lee's request for review on 28 November 2006 and therefore does not require the Council to take any remedial action in regard to this Decision Notice.

## **Appeal**

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Should either party wish to appeal 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 of receipt of this notice.

**Margaret Keyse**  
**Head of Investigations**  
**12 March 2007**