

Decision Notice



Decision 058/2014 Roy Mackay and Scottish Borders Council

Appointments of Curators ad Litem and Reporting Officers: failure to respond within statutory timescales

Reference No: 201400287
Decision Date: 06 March 2014

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

On 3 December 2013, Mr Mackay asked Scottish Borders Council (the Council) for information about the appointment of panel members under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001. This decision finds that the Council failed to respond to Mr Mackay's requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the Council to comply with the request for review.

Background

Date	Action
3 December 2013	Mr Mackay made an information request to the Council.
24 December 2013	The Council responded to the information request.
10 January 2014	Mr Mackay wrote to the Council requiring a review of its decision.
	Although Mr Mackay was sent an acknowledgement on 13 January 2014, he did not receive a response to his requirement for review.
11 February 2014	Mr Mackay wrote to the Commissioner's Office, stating that he was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13 February 2014	The Council was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.
	The Council did not provide the Commissioner with any submissions.



Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
3. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

DECISION

The Commissioner finds that Scottish Borders 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 Mackay. In particular, the Council failed to respond to Mr Mackay's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the Council to provide Mr Mackay with a response to his requirement for review, by **Tuesday 22 April 2014**.

Decision 058/2014
Mr Roy Mackay
and Scottish Borders Council



Appeal

Should either Mr Mackay or Scottish Borders Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. The appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Deputy Head of Enforcement
6 March 2014