



Scottish Information
Commissioner

**Decision 060/2007 – Mr Colin Kennedy and Argyll and Bute
Council**

Failure to respond to information request

**Applicant: Mr Colin Kennedy
Authority: Argyll and Bute Council
Case No: 200700279
Decision Date: 12 April 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 060/2007 – Mr Colin Kennedy and Argyll and Bute Council

Failure of Argyll and Bute Council to respond to a request for information and a request for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002

Facts

1. On 9 November 2006, Mr Kennedy made an information request to Argyll and Bute Council (the Council) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In this email, Mr Kennedy requested information relating to electrical certificates for a named property.
2. Mr Kennedy sent a further email to the Council on 24 January 2007, as he had not received a response to the information request that he submitted on 9 November 2007 and was seeking a review of the Council's lack of response.
3. Mr Kennedy did not receive a response to this request for review. On 22 February 2007, Mr Kennedy applied to the Scottish Information Commissioner, requesting that he investigate the Council's failure to respond to his request for information and request for review within the timescales laid down in FOISA.
4. The Commissioner notified the Council of the application made by Mr Kennedy and invited its comments on 19 March 2007 in terms of section 49(3)(a) of FOISA.
5. The Council responded on 11 April 2007. In responding to the letter, the Council advised that it had received both of the emails from Mr Kennedy and that it did recognise that the email of 9 November 2006 was a valid request for information under FOISA. The Council also advised that it accepts that the email of 24 January 2007 was a request for a review. However, the Council contends that it does not accept that Mr Kennedy has not had any response from the Council.
6. In its submissions to the Commissioner, the Council made reference to previous correspondence with Mr Kennedy and to information requests from him, which, the Council advises, were for the same information as he requested in this instance. The Council asserts that it has responded fully to these information requests in the past and has provided me with copies of emails to substantiate this.



7. The Council also advised that although it accepts that Mr Kennedy's request of 9 November 2006 was not dealt with in accordance with section 10 of FOISA, it is of the opinion that it is inaccurate to say that the Council did not respond to the initial request, or that Mr Kennedy was denied access to information that he should have received. The Council also states that it accepts that a formal review of Mr Kennedy's request of the 9 November 2006 was not performed, but it contends that the initial request was responded to and reviewed in the course of correspondence.
8. In its response to the Commissioner, the Council provided copies of email communications that passed between it and Mr Kennedy, two of these emails relate to acknowledgements that were sent to Mr Kennedy. The first of these emails is dated 10 November 2006 and is an acknowledgement which was sent to Mr Kennedy on receipt of his information request of 9 November 2006. The second email is dated 5 February 2007 and relates to an acknowledgement which was sent to Mr Kennedy following his submission of his request for a review.

The Commissioner's Analysis and Findings

9. 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.
10. The Commissioner is satisfied that Mr Kennedy made a request for information to the Council on 9 November 2006 which was 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 24 January 2007.
11. 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.



12. Having considered the full submissions that have been made to the Commissioner by the Council regarding this case, the Commissioner is not satisfied that the Council responded to Mr Kennedy's request for information within the timescale laid down under section 10(1) of FOISA. Although the Council acknowledged the information request, indicating that the request had been received and was being attended to, no substantive response was ever sent to Mr Kennedy. The Council has contended that the information request was responded to in the course of correspondence. However, all of the correspondence supplied to the Commissioner by the Council (apart from one email which concerns a related matter to that which Mr Kennedy has requested information on, but does not address this particular request) dates prior to the submission of the information request in question. The Commissioner therefore cannot accept this argument from the Council.
13. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
14. Having considered the submissions that have been made by the Council to the Commissioner, the Commissioner is satisfied that the Council did not respond to Mr Kennedy's requirement for review within the timescale laid down under section 21(1) of FOISA.
15. The Commissioner notes that the Council sent an email to Mr Kennedy on 5 February 2007 acknowledging receipt of his request for a review. However, as in the case of the request for information, it is clear that no substantive response was sent to Mr Kennedy in relation to his request for a review. The Commissioner has taken into account the comments which have been made by the Council in respect of its assertion that the request was reviewed in the course of correspondence. However, given that the correspondence referred to by the Council predates the request for information and the request for a review, the Commissioner cannot agree that a review has been carried out of this request.



Decision

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

The Commissioner requires the Council to respond to Mr Kennedy's request for information by either disclosing the information that he has requested, or by providing a notice under section 16 (refusal of request) or section 17 (notice that information is not held). The Commissioner requires the Council to do this within 45 days of receipt of this decision notice.

Appeal

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 April 2007