

# Decision Notice

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**Decision 078/2015: Mr Ross May and Perth and Kinross Council**

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## **Local Government Elections**

Reference No: 201500284

Decision Date: 17 June 2015



Scottish Information  
Commissioner

## Summary

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On 19 September 2014, Mr May asked Perth and Kinross Council (the Council) for information relating to the costs and provision of services for local government elections in 2012/13.

The Council responded, advising Mr May that it could only respond to one element of his request as it considered the remainder to be information held by the Returning Officer, not subject to the terms of FOISA. Following a review, Mr May remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had failed to respond to Mr May's request for information in accordance with Part 1 of FOISA. This was because the information requested was held by the Council in its own right. The Council also failed to respond to Mr May's requirement for review within the statutory timeframe.

As all of the information identified as falling within the scope of this request was supplied to Mr May during her investigation, the Commissioner did not require the Council to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 20(3) (Requirement for review of refusal etc.); 21(1) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 12 September 2014, Mr May made a request for information to the Council. The information requested related to the services provided for, and the costs associated with, local government elections in 2012/13.
2. The Council responded on 24 September 2014. It stated that, with the exception of Mr May's request relating to the number of Council employees diverted from normal Council duties, it did not hold the requested information and therefore was not required to supply it. This was because the rest of the information was held by the Council on behalf of the Returning Officer (who was not subject to FOISA).
3. On 24 September 2015, Mr May wrote to the Council requesting a review of its decision, on the basis that his information request related to local government elections and so the information would be held by the Council in its own right.
4. The Council responded to Mr May on 9 October 2014. It confirmed that it held no information, in terms of section 17 of FOISA, but only in relation to that part of his request relating to the diversion of Council employees from normal duties.

5. On 16 October 2014, Mr May wrote to the Council requesting another review of its decision. He did not accept the Council's application of section 17 of FOISA and submitted that the Council had failed to respond to the remainder of his request of 12 September 2014.
6. The Council notified Mr May of the outcome of its review on 20 November 2014. The Council apologised for the delay in responding to this request but maintained its position that the information requested (relating to the diversion of Council employees) was not held. The Council also suggested that the cost of retrieving the information would breach the cost limit of £600 set under section 12(1) of FOISA. Again, the Council did not address the remainder of his request.
7. On 24 November 2014, Mr May wrote to the Council, stating he was dissatisfied as the Council had failed to respond to all aspects of his request.
8. On the same date, the Council provided Mr May with an amended review response, which again relied on section 17(1)(b) and 12(1) of FOISA and explained that the remainder of the information caught by the request was held by the Council on behalf of the Returning Officer and so was not held for the purposes of FOISA.
9. On 21 February 2015, Mr May wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr May stated he was dissatisfied with the outcome of the Council's review, because he was not satisfied with the Council's reliance on section 17 of FOISA and did not accept that the remainder of the information covered by his request was held by the Council on behalf of the Returning Officer. Mr May was also unhappy with the time taken to respond to his request.

## **Investigation**

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10. The application was accepted as valid. The Commissioner confirmed that Mr May made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
11. On 10 March 2015, the Council was notified in writing that Mr May had made a valid application.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, focusing on the provisions cited by the Council in its responses to Mr May.
13. During the investigation, the Council accepted that it was incorrect to state that it only held the information requested on behalf of the Returning Officer. The Council supplied Mr May with this information. The Council withdrew its reliance on sections 17(1) and 12(1) of FOISA and provided information on the diversion of employees during the investigation.
14. The Council apologised for its earlier errors. Mr May remained dissatisfied with the manner in which his request had been handled.

## Commissioner's analysis and findings

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15. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr May and the Council. She is satisfied that no matter of relevance has been overlooked.

### *Information held by the Council*

16. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.
17. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
18. Section 3(2)(a)(i) of FOISA states that if a Scottish public authority holds the information on behalf of another person, then the information is not held by that authority for the purposes of FOISA. Consequently, if the information requested in any given case is held on behalf of another person, the authority must give the applicant notice under section 17(1) of FOISA.
19. During the investigation, the Council accepted it had been incorrect in applying section 17(1) to Mr May's request and in informing him that the remainder of his request was information held on behalf of the Returning Officer. Information was provided to Mr May during the investigation and the Commissioner is now satisfied that the Council has supplied him with the information falling within the scope of his request.
20. Having considered all relevant submission and the terms of the requests, the Commissioner accepts that (by the close of the investigation) the Council had taken adequate steps to identify and locate any relevant information it held. However, it is also clear that it failed to do this satisfactorily in responding to Mr May's information request and requirement for review. As a result, the Council failed to comply with section 1(1) of FOISA.
21. Given its changed position during the investigation, the Commissioner is also satisfied that the Council was incorrect to rely on sections 17(1) and 12(1) in relation to that part of Mr May's request relating to the diversion of Council employees. This was also a breach of section 1(1).

### *Section 21 of FOISA – Review by Scottish public authority*

22. In his application to the Commissioner, Mr May expressed dissatisfaction with the manner in which the Council handled his request for information, specifically in relation to the recognition and timing of his requirement for review.
23. Section 21(4)(a) of FOISA provides that an authority which receives a requirement for review may confirm a decision complained of, with or without such modifications as it considers appropriate.

24. Section 20(3) of FOISA sets out the requirements of a valid requirement for review. It must:
  - (i) Be in writing or other permanent form,
  - (ii) State the name of the applicant and an address for correspondence,
  - (iii) Specify the request for information to which the requirement for review relates, and the matter which gives rise to the applicant's dissatisfaction.
25. 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.
26. Mr May's correspondence of 24 September 2014 met all of the above criteria set out in paragraph 24, yet it is evident that the Council failed to recognise it as such. A full response to this requirement for review was not provided to Mr May until 24 November 2014, following further correspondence. Mr May's correspondence of 16 October 2014, acknowledged by the Council as a valid requirement for review, was not responded to until 20 November 2014.
27. It is a matter of fact that the Council did not provide a response to Mr May's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
28. The Commissioner is concerned to note that Mr May's correspondence of 24 September 2014 was not recognised as a valid requirement for review at the time of receipt, and that it was only after Mr May's continued correspondence following the Council's response of 20 November 2014 that it addressed all elements of Mr May's request fully.
29. Given that the requests were met in full during the investigation, the Commissioner will not require any further action in response to Mr May's application.

## Decision

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The Commissioner finds that Perth and Kinross 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 May. In failing to adequately respond to Mr May's request in accordance with Part 1, the Council failed to comply with section 1(1). The Council also failed to respond to Mr May's requirement for review within the timescales laid down by section 21(1) of FOISA.

Given that the Council provided Mr May with a full response during the course of the investigation, the Commissioner does not require the Council to take any action in response to these failures, in response to Mr May's application.

## **Appeal**

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Should either Mr May or the 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.

**Margaret Keyse**  
**Scottish Information Commissioner**

**17 June 2015**

### 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.

...

#### 3 Scottish public authorities

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- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
- (a) by the authority otherwise than-
    - (i) on behalf of another person; or

...

#### 20 Requirement for review of refusal etc.

...

- (3) A requirement for review must-
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) state the name of the applicant and an address for correspondence; and
  - (c) specify-
    - (i) the request for information to which the requirement for review relates; and
    - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1)

...

#### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**