



Scottish Information  
Commissioner

**Decision 079/2005 - Mr David Emslie and the Scottish Public  
Services Ombudsman**

**Applicant: Mr David Emslie  
Authority: Scottish Public Services Ombudsman  
Case No: 200503142  
Decision Date: 19 December 2005**

**Kevin Dunion  
Scottish Information Commissioner**

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## **Decision 079/2005 - Mr David Emslie and the Scottish Public Services Ombudsman**

No formal response to information request or subsequent request for review in terms of the Freedom of Information (Scotland) Act 2002 – public authority held to have failed to comply with section 10(1) and section 21(1)

### **Facts**

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On 14 August 2005, Mr Emslie made an information request to the Scottish Public Services Ombudsman (SPSO) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In his letter, Mr Emslie requested a wide range of information including all correspondence which the SPSO had had with the Scottish Executive and Grampian Housing Association and press releases, reports and legislation relating to the remit of SPSO.

The SPSO did not respond to this information request.

Mr Emslie wrote to the SPSO on 17 September 2005, stating that he had not received the information requested and asking it to review its failure to supply the information. Since that date, the SPSO has written to Mr Emslie on several occasions to apologise for the delay.

On 15 November 2005, Mr Emslie applied to the Scottish Information Commissioner, requesting that he investigate the SPSO's failure to respond to his request for information and to his subsequent request for review.

This Office notified the SPSO of the application made by Mr Emslie on 25 November 2005 and invited its comments in terms of section 49(3)(a) of FOISA. The letter made it clear that at this stage the Commissioner was considering the alleged technical breach of FOISA rather than whether any of the information requested by Mr Emslie should be provided to him.

The SPSO responded on 1 December 2005, stating that correspondence with Mr Emslie was dealt with, in accordance with its policy, by a particular member of staff. Unfortunately, the member of staff in question had been unavailable for work because of illness. Consequently, Mr Emslie's correspondence was dealt with by other staff who had informed him of the delay, and the reasons for that delay. However, the SPSO had not responded formally to Mr Emslie's information request or request for review and had assumed that Mr Emslie had acquiesced to that delay.



## Decision

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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.

The SPSO has explained that the delay was caused by the serious illness of the member of staff dealing with Mr Emslie's request. The Ombudsman sent letters to Mr Emslie stating this fact.

However, the Commissioner is satisfied that Mr Emslie made a valid request for information to the SPSO on 14 August 2005 and a valid request for review to the SPSO on 17 September 2005 and that both were received by the SPSO.

Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information.

Additionally, section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.

The SPSO has stated that it did not respond to Mr Emslie's request for information, because the letter was not logged. Although the SPSO acknowledged Mr Emslie's request for review, it treated this letter as a complaint about service rather than as a request for review under FOISA. Accordingly, it did not deal with the request for review within the timescale specified by FOISA. Although the Commissioner recognises that this failure was due to illness of a member of staff and to an error in records management, he is unable to take these matters into account and therefore finds that the SPSO failed to comply with section 10(1) and section 21(1) of FOISA in the manner in which it dealt with Mr Emslie's request and request for review.

The SPSO has confirmed that it is now dealing with Mr Emslie's request of 14 August 2005. The Commissioner requires the SPSO to respond to Mr Emslie's request for information, by either providing the information requested or giving notice in terms of section 16 (refusal of request) or section 17 (notice that information is not held) of FOISA (as appropriate), within 42 days of receipt of this decision notice.



## **Appeal**

Should either the SPSO or Mr Emslie 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 of receipt of this notice.

**Margaret Keyse**  
**Head of Investigations**  
**19 December 2005**