

# Decision Notice



Decision 092/2013 Mr Peter Urpeth and Comhairle nan Eilean Siar

Failure to respond to request and requirement for review

Reference No: 201300968  
Decision Date: 15 May 2013

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

**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether Comhairle nan Eilean Siar (the Comhairle) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Urpeth on 18 February 2013.

## Background

---

1. On 18 February 2013, Mr Urpeth wrote to the Comhairle requesting certain specified information.
2. Mr Urpeth received no response to his request for information.
3. On 20 March 2013, Mr Urpeth wrote to the Comhairle again, requesting a review in respect of its failure to respond.
4. Mr Urpeth did not receive a response to his requirement for review and, on 22 April 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Urpeth made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

---

6. On 26 April 2013, the Comhairle was notified in writing that an application had been received from Mr Urpeth and was invited to comment on the application.
7. The Comhairle responded on 9 May 2013 and its submissions are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

8. The Comhairle acknowledged that it had received Mr Urpeth's request for information and requirement for review. The Comhairle commented that its failure to respond to these was not an explicit refusal to disclose information under FOISA, but a breakdown in the administration process of responding to requests for information. In its response to Mr Urpeth, also dated 9 May 2013, the Comhairle apologised to Mr Urpeth for not responding when required to do so.
9. The Comhairle explained that when it became aware (on 25 April 2013) that a number of information requests had not been appropriately logged and some not responded to in time, additional resources were allocated to bring the system up to date. The Comhairle notified the Commissioner's office of this, in the context of implementation of the Action Plan produced as a result of the Commissioner's Assessment of the Comhairle's FOI practice in 2012.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case
11. Since the Comhairle did not provide a response to Mr Urpeth's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
12. 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, again subject to certain exceptions which are not relevant in this case.
13. Since the Comhairle did not provide a response to Mr Urpeth's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. Given that the Comhairle has now responded to Mr Urpeth's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Urpeth's application. She notes that discussions are ongoing in the context of the Action Plan.

## DECISION

The Commissioner finds that Comhairle nan Eilean Siar (the Comhairle) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Urpeth, in particular by failing to respond to Mr Urpeth's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Comhairle has now responded to Mr Urpeth's requirement for review, the Commissioner does not require the Comhairle to take any action in response to these failures.

Decision 092/2013  
Mr Peter Urpeth  
and Comhairle nan Eilean Siar



## Appeal

---

Should either Mr Urpeth or Comhairle nan Eilean Siar 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 after the date of intimation of this decision.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**15 May 2013**



## Appendix

---

### Relevant statutory provisions

#### 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.

...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

##### 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.

...