

# Decision Notice



Decision 098/2012 Mr H and Aberdeen City Council

Failure to respond to request for review

Reference No: 201200998

Decision Date: 18 June 2012

[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 Aberdeen City Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information requests made by Mr H.

## Background

---

1. On 9 February 2012, Mr H wrote to the Council requesting certain specified information.
2. The Council responded on 9 March 2012.
3. On 19 March 2012, Mr H wrote to the Council requesting a review of its decision.
4. Mr H did not receive a full response to his requirement for review (which the authority explained it was dealing with as a request for clarification) and on 18 May 2012 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 H had made a request for information to a Scottish public authority and had 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 29 May 2012, the Council was notified in writing that an application had been received from Mr H and was invited to comment on the application.
7. The Council responded on 13 June 2012 and its submissions are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

---

8. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirements to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
9. In its submissions, the Council advised that although the letter was headed "Request for Review", it was of the opinion that Mr H's letter of 19 March 2012 was seeking clarification on the content of the information already provided in the Council's response of 9 March 2012. The Council therefore responded with further clarification, rather than conducting a review.
10. Section 20(3) of FOISA sets out the requirements of a valid request for review. It must:
  - Be in writing or in another form which is capable of being used for subsequent reference
  - State the name of the applicant and an address for correspondence, and
  - Specify the request for information to which the requirement for review relates, and the matter which gives rise to the requester's dissatisfaction with the way in which the authority has dealt with that request.
11. The first two of these requirements are clearly met by Mr H's letter of 19 March 2012. The Commissioner will therefore consider whether the third element of the requirements of section 20(3) was also met by the letter.
12. Requesters do not have to explicitly use the term "requirement for review" in their correspondence. If dissatisfaction is expressed in relation to way in which the authority has dealt with a request under Part 1 of FOISA, then it can be said that a requirement for review has been made.
13. In this instance, Mr H made explicit reference to wanting a review. He made it clear that he was challenging the Council's decision on his information request of 9 February 2012. Having considered the terms of the letter of 19 March 2012, the Commissioner considers it reasonably clear that the basis of Mr H's dissatisfaction was that he did not believe he had received a full response to his request. He may have asked for clarification, but the Commissioner considers that form of expression (taken in context) to be consistent with the interpretation he has arrived at: there is no apparent reason why reference to clarification should conflict with that interpretation, bearing in mind that FOISA provides for the review of an authority's response to a request but not for its clarification.
14. The Commissioner is therefore satisfied that Mr H's letter of 19 March 2012 constituted a valid request for review in terms of section 20(3) of FOISA. She would make it clear, however, that this conclusion does not extend to the request in that letter for details of a named system: on a reasonable interpretation, she considers that to go beyond the scope of the original request for information and therefore to constitute a new request.



15. To the extent that the Council did not provide a response to Mr H's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
16. 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 them.

## DECISION

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr H, in particular by failing to identify and respond to Mr H's requirement for review within the timescales laid down by section 21(1) of FOISA and otherwise in accordance with that section.

The Commissioner therefore requires the Council to conduct a review in relation to Mr H's request, in accordance with section 21(4) of FOISA, and notify him of the outcome of that review in accordance with section 21(5), within 45 calendar days after the date of intimation of this decision notice, that is by 2 August 2012.

## Appeal

---

Should either Mr H or Aberdeen City Council 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 notice.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**18 June 2012**



## Appendix

---

### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

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

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- (2) A requirement under subsection (1) is referred to in this Act as a "requirement for review".
- (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.

...



- (4) The authority may, as respects the request for information to which the requirement relates-
  - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
  - (b) substitute for any such decision a different decision; or
  - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...