

# Decision Notice



Decision 143/2008 Mr X and East Ayrshire Council

Complaints mechanisms

Reference No: 200801255

Decision Date: 20 November 2008

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr X made an information request to East Ayrshire Council (the Council) for information concerning social work complaints. The Council initially failed to respond to this request, and Mr X sought a review. The Council provided a response, but Mr X was dissatisfied with the handling of this request and he applied to the Commissioner for a decision.

The Commissioner found that the Council had breached Part 1 of FOISA, in particular by failing to comply with the timescale required by section 10(1)(a), and by failing to advise Mr X of his right to make an application to the Commissioner in line with section 21(10). However, the Commissioner found that the Council had complied with Part 1 of FOISA by supplying the information Mr X had requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1)(a) (Time for compliance) and 21(1) and (10) (Review by Scottish public authority)

## Background

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1. On 21 May 2008, Mr X wrote to the Council requesting an outline of any internal or statutory complaints mechanisms available to him (in relation to a specific complaint he indicated he wished to make); whether a named individual was registered as a social worker, and whether any such professional registration provided for a grievance procedure.
2. The Council did not respond to this request and, on 10 July 2008, Mr X wrote to the Council requesting a review of its failure to reply to his original information request.
3. The Council replied to Mr X on 29 July 2008, enclosing a leaflet about social work complaints procedures, and apologising to him for having lost the original information request. This letter also provided answers to his specific questions about the named individual and his other information requests.



4. Mr X subsequently wrote to the Commissioner, stating that (i) he was dissatisfied with the failure by the Council to respond to his original information request; (ii) he was dissatisfied by the Council's explanation for having lost his original letter and (iii) that the Council had failed to inform him of his right to apply to the Scottish Information Commissioner. Mr X applied to the Commissioner for a decision in terms of section 47(1) of FOISA, asking the Commissioner to find that the Council had not responded appropriately to his request.
5. The Commissioner notified the Council that Mr X's application had been received in a letter dated 29 August 2008. The Council was asked to confirm whether it had received Mr X's letter of 21 May 2008. This confirmation was provided and the application was then validated by establishing that Mr X 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.
6. During the validation process, the Validation Officer also contacted Mr X to seek clarification as to whether his complaint related to the handling of his request by the Council, or to the information which he had received, or to both. In further correspondence, Mr X indicated that he considered the information provided to him amounted to a "bare sufficiency". Following a further request for clarification on this point, Mr X noted that he believed the Council held more information than had been provided in response to his request for an outline of the complaints mechanisms. However, he acknowledged that the Commissioner may well consider the response provided satisfied the terms of his request.
7. Following the correspondence described in paragraph 6 above, it was determined that the investigation would focus on the technical matters raised by Mr X, but would also consider whether the information supplied by the Council satisfied the terms of Mr X's request for an outline of complaint mechanism's available to him. The case was then allocated to an investigating officer.

## Investigation

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8. On 1 October 2008, the investigating officer wrote to the Council inviting it to comment on the application in accordance with section 49(3) of FOISA and to answer specified questions for the purposes of the investigation. The Council was asked about the procedures followed in this case, and the steps taken to identify relevant information.
9. The Council responded in full on 21 October 2008, acknowledging that it had lost Mr X's original request; that it had failed to treat the follow up letter as a request for review; and that it had failed to advise Mr X of his right to seek a decision from the Commissioner. The Council submitted, however, that it had provided all relevant information in response to his request.
10. The Council provided details of its social work complaints procedure and related documents. It also provided copies of its procedures for handling freedom of information requests, and it answered various questions required by the investigating officer.



11. Among the documents supplied was a lengthy and detailed Governmental circular about the third stage of the social work complaints procedure. This document included a wide range of material including background, policy objectives and applicable principles as well as technical detail, and was clearly not intended, nor was suitable for, the guidance of members of the public. The Council argued that this document could not reasonably be considered to be an “outline”, which was what had been requested by Mr X.
12. The Council queried the scope of the investigation in this case, given that the terms of Mr X’s application to the Commissioner had changed during the correspondence described in paragraph 7 above. It disagreed with the Commissioner’s interpretation of the correspondence with Mr X, arguing that in its view he had expressed at an earlier stage what the Council considered to be Mr X’s satisfaction, albeit minimal, with the provision of the outline information by the Council to him.

### **Commissioner’s analysis and findings**

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13. In coming to a decision on this matter, the Commissioner has considered all the information and submissions presented by both Mr X and the Council and is satisfied that no matter of relevance has been overlooked.
14. Whilst the Commissioner has acknowledged the Council’s concerns about the scope of his investigation in this case, he has considered its handling of Mr X’s request in full.
15. Having considered the terms of Mr X’s request, and particularly the fact that he had asked only for an outline of the complaint mechanisms available to him, the Commissioner is satisfied that the information supplied to him fulfils that request. Although the Council holds additional information relating to its complaints processes, the Commissioner accepts that such information would not be an outline, and so falls outwith the scope of his request.
16. In providing the information it did in response to Mr X’s request for review, the Commissioner therefore finds that the Council acted in accordance with Part 1 of FOISA.
17. However, the Commissioner has found that the Council failed to comply with certain technical requirements of Part 1 of FOISA.
18. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of a request for information to comply with it, subject to certain exceptions which are not relevant to this case. Since the Council failed to respond to Mr X’s initial request for information, the Commissioner finds that the Council failed to respond to Mr X’s information request within the 20 working days allowed by FOISA.



19. Section 21(10) requires public authorities, when providing notice of the outcome of a review undertaken under the terms of section 21(1) to advise the applicant of their rights to apply to the Commissioner, and to appeal the Commissioner's decision to the Court of Session. Since no such advice was given in this case, the Commissioner finds that the Council failed to comply with section 21(10) of FOISA.
20. The Council has acknowledged these failures and identified that its normal procedures were not followed in this case. In the circumstances, the Commissioner does not require any further action to be taken in relation to these failures in response to this decision.

## DECISION

The Commissioner finds that East Ayrshire Council (the Council) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr X, in particular by failing to respond to Mr X's request for information within the timescale allowed by section 10(1) of FOISA and also in failing to advise Mr X of the right to apply to the Commissioner and of appeal as required by section 21(10).

The Commissioner finds that the Council otherwise acted in compliance with Part 1 of FOISA in responding to the information request made by Mr X, and in particular by supplying the information it did.

The Commissioner does not require the Council to take any action in relation to failures identified above in response to this decision.

## Appeal

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Should either Mr X or the 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.

**Margaret Keyse**  
**Head of Investigations**  
**20 November 2008**



## Appendix

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### 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.

##### 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.

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.