

# Decision Notice



Decision 194/2012 Mr William Cordiner and Tayside Fire and Rescue Board

Failure to respond to request and requirement for review

Reference No: 201201447

Decision Date: 26 November 2012

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle

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## Summary

This decision considers whether Tayside Fire and Rescue Board (the Board) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr Cordiner.

## Background

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1. For the purposes of FOISA, this decision is concerned with the actions of the Board, which is the joint board serving as the fire authority for the local authority areas of Perth and Kinross, Dundee and Angus. The Board is a Scottish public authority for the purposes of FOISA.
2. The day to day running of the fire service is carried out by Tayside Fire and Rescue Service (TFR). TFR is not itself a Scottish public authority for the purposes of FOISA, but dealt with the information request considered in this decision on behalf of the Board. The Model Publication Scheme adopted by the Board itself notes that requests for information held by the Board should be directed to TFR.
3. On 21 May 2012, Mr Cordiner emailed TFR requesting certain specified information. Within this email, Mr Cordiner also enquired about a number of other matters that are not the subject of this decision.
4. TFR wrote to Mr Cordiner on 14 June 2012. This addressed some of the matters raised in Mr Cordiner's email of 21 May 2012, but did not provide a response to the specified information request that is the subject of this decision.
5. On 22 June 2012, Mr Cordiner emailed TFR requesting a review of its failure to respond to his request for information.
6. Mr Cordiner did not receive a response to his requirement for review and on 24 July 2012, wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Cordiner 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

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8. On 21 August 2012, TFR was notified in writing that an application had been received from Mr Cordiner and was invited to comment on the application.
9. TFR responded on 1 October 2012 and its submissions are considered in the Commissioner's analysis and findings below.
10. During the investigation, TFR advised the Commissioner that a review had now been carried out and Mr Cordiner had been notified of the outcome of the review on 8 October 2012. TFR provided the Commissioner with a copy of its review response of 8 October 2012.

## Commissioner's analysis and findings

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11. 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.
12. Since TFR did not provide a response to Mr Cordiner's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. 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, subject to certain exceptions which are not relevant in this case.
14. Since TFR did not provide a response to Mr Cordiner's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. In its submissions to the Commissioner, TFR stated that it had responded to Mr Cordiner's email of 21 May 2012 by providing the information which it considered it could provide. TFR noted that, within its response of 14 June 2012, it had informed Mr Cordiner that it was unable to provide information or comment on anything relating to the Board.
16. TFR also explained that, at the time of Mr Cordiner's request, its policy was that requirements for review should be addressed to the Board and the Board would then forward the requirement for review to TFR with an instruction from the Board to carry out a review. However, due to a breakdown in internal procedures, this did not happen. TFR explained that a review panel had now been set up to consider Mr Cordiner's requirement for review. As noted above, Mr Cordiner was notified of the outcome of the review on 8 October 2012. TFR also explained that it and the Board had now reviewed their internal procedures to ensure there was no recurrence of the problem encountered in this particular case.

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17. The Commissioner understands some of the difficulties that have been faced by TFR in this case; in particular, she notes that there has been a considerable volume of correspondence to and from Mr Cordiner regarding a number of issues. The correspondence has often been complex and individual items of correspondence have often covered a number of disparate topics.
18. However, the Commissioner also notes that TFR has sought to distinguish itself from the Board in some of its correspondence with Mr Cordiner. For example, in its response to Mr Cordiner's requirement for review, it has stated that that "TFR cannot comment on why this request was not dealt with by the Board." It is not clear to the Commissioner that TFR has adequately attempted to explain to Mr Cordiner the procedure by which requests for information to TFR or the Board (or both) would be administered. The Commissioner would suggest that, in future, it is made clear to requesters that TFR is providing a response on behalf of the Board.
19. Given that TFR has now responded to Mr Cordiner's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Cordiner's application.

## DECISION

The Commissioner finds that Tayside Fire and Rescue Board (the Board) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Cordiner, in particular by failing to respond to Mr Cordiner'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 Board has now responded to Mr Cordiner's requirement for review, the Commissioner does not require the Board to take any action in response to these failures.

## Appeal

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Should either Mr Cordiner or Tayside Fire and Rescue Board 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.

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**Margaret Keyse**  
**Head of Enforcement**  
**26 November 2012**



## 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.

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##### 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.

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