

# Decision Notice



Decision 222/2011 Mr John McKay and East Dunbartonshire Council

Failure to respond to request and requirement for review

Reference No: 201101929

Decision Date: 09 November 2011

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**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

This decision considers whether East Dunbartonshire Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr John McKay.

## Background

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1. On 21 June 2011, solicitors acting on behalf of Mr McKay wrote to the Council requesting information about an accident including the accident report and subsequent inspections, repairs or maintenance, etc.
2. Subsequent references to correspondence to and from Mr McKay should be read as references to correspondence to and from his solicitors on his behalf.
3. The Council did not respond to this request and on 3 August 2011 Mr McKay wrote to the Council requesting a review.
4. Mr McKay did not receive any response to this requirement for review.
5. On 12 October 2011 Mr McKay wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to respond and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr McKay 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.
7. The case was then allocated to an investigating officer.

## Investigation

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8. On 21 October 2011, the Council was notified in writing that an application had been received from Mr McKay and was invited to comment on the application, as required by section 49(3)(a) of FOISA.



9. The Council responded on 4 November 2011, admitting that it had failed in its duty in terms of Part 1 of FOISA in that it had not provided Mr McKay with a response to his request within the appropriate timeframe, or carried out a review as was his statutory right.
10. The Council apologized for this and indicated that this failure had been as a result of the volume of requests it was receiving. The Council explained that it had recognized these difficulties and was undergoing a major reconfiguration of how it processed requests. The Council confirmed that a full review response was being prepared in this case and would be provided to Mr McKay. By the date of this decision, however, no response had been provided.

### **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. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
13. In the circumstances, the Commissioner concludes that the Council failed to deal with Mr McKay's request for information or his requirement for review within the respective periods of 20 working days specified by sections 10(1) and 21(1) of FOISA.
14. Consequently, the Commissioner now requires the Council to deal with Mr McKay's requirement for review, in accordance with the requirements of section 21 of FOISA (the relevant provisions of which are set out in the appendix to this decision).

### **DECISION**

The Commissioner finds that East Dunbartonshire Council (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 McKay, in particular by failing to respond to Mr McKay's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the Council to comply with Mr McKay's requirement for review, in accordance with section 21 of FOISA, by 4 January 2012.

Decision 222/2011  
Mr John McKay  
and East Dunbartonshire Council



## **Appeal**

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Should either Mr McKay or East Dunbartonshire 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**  
**09 November 2011**



## Appendix

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### Relevant statutory provisions

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

##### 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.
- ....
- (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.

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