

# Decision Notice



Decision 234/2013 Mrs Frances Thompson and City of Edinburgh Council

Failure to comply with technical requirements of FOISA and the EIRs

Reference No: 201302124

Decision Date: 23 October 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

This decision considers whether City of Edinburgh Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mrs Frances Thompson (Mrs Thompson).

## Background

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1. On 4 July 2013, Mrs Thompson wrote to the Council requesting certain specified environmental information.
2. The Council's response (which was undated) was received by Mrs Thompson on 7 August 2013.
3. On the same day, Mrs Thompson wrote to the Council requesting a review of its decision.
4. Mrs Thompson did not receive a response to her requirement for review and, on 10 September 2013, wrote to the Commissioner's Office, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
5. The application was validated by establishing that Mrs Thompson 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

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6. On 17 September 2013, the Council was notified in writing that an application had been received from Mrs Thompson and was invited to comment on the application.



7. The Council provided partial submissions on 2 October 2013. After further information was sought from Mrs Thompson to enable the Council to complete its investigations, the remainder of the submission was received on 22 October 2013. Its submissions are considered in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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8. The Council explained that the reason for the delay in processing Mrs Thompson's requirement for review was due to the hand delivered letter being placed in the Council's internal mail system in error, rather than being directed to its Freedom of Information Unit. Once the letter was identified as a requirement for review, it was scanned and logged on the relevant computer system.
9. Unfortunately, Mrs Thompson's letter was not date stamped on the day it was received and, due to the delays in processing it, it was not logged on the relevant computer system until 13 August 2013. This then generated a response date of 10 September 2013.
10. A response to Mrs Thompson's requirement for review, although dated 6 September 2013, was issued by the Council on 10 September 2013.
11. Although the Council believed they had acted in good faith in dealing with Mrs Thompson's requirement for review, the response was in fact issued outwith the 20 working days allowed by the FOISA and the EIRs. The Council has confirmed that it has since spoken with relevant reception staff to ensure that any freedom of information mail is routed directly to the Council's Freedom of Information Unit.
12. In *Decision 218/2007 Professor A D Hawkins and Transport Scotland*<sup>1</sup> the Commissioner confirmed (at paragraph 51) that where environmental information is concerned, there are two separate statutory frameworks for access to that information. In terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
13. 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. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
14. Since the Council did not provide a response to Mrs Thompson's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and with regulation 16(4) of the EIRs.
15. Given that the Council responded to Mrs Thompson's requirement for review on 10 September 2013, the Commissioner does not require it to take any further action in this case, in response to Mrs Thompson's application.



## DECISION

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information request made by Mrs Thompson, in particular by failing to respond to Mrs Thompson's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

Given that a response has now been provided to Mrs Thompson's requirement for review, the Commissioner does not require the Council to take any action in response to this failure.

## Appeal

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Should either Mrs Thompson or City of Edinburgh Council wish to appeal against this decision, they have the right to 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.

**Margaret Keyse**  
**Head of Enforcement**  
**23 October 2013**



## 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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##### 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.

##### 16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

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- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

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