



Scottish Information
Commissioner

**Decision 022/2006 – Mr Alexander Plunkett and
Dumfries & Galloway Council**

**Applicant: Mr Alexander Plunkett
Authority: Dumfries & Galloway Council
Case No: 200503238
Decision Date: 8 February 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 022/2006 – Mr Alexander Plunkett and Dumfries & Galloway Council

Failure to respond to applicant within the timescales specified in the Freedom of Information (Scotland) Act 2002 – application not upheld by Commissioner

Facts

1. On 9 September 2005, Mr Plunkett emailed an information request to Dumfries & Galloway Council (the Council) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).
2. The Council responded in full to Mr Plunkett's request in a letter dated 5 October 2005. This letter was not posted by the Council until 7 October 2005 and was received by Mr Plunkett on 10 October 2005. In this letter, the Council disclosed some information to Mr Plunkett and withheld the remainder of the information on the basis that the information was available on its website and was otherwise accessible (and therefore exempt under section 25 of FOISA). The Council provided Mr Plunkett with the exact location of the information on its website and advised Mr Plunkett that if he had difficulty accessing the information through the website it could make alternative arrangements for him.
3. On 19 November 2005, Mr Plunkett asked the Council to carry out a review on the basis that it had not responded to his request for information within 20 working days.
4. On 8 December 2005, the Council contacted Mr Plunkett to detail the manner in which it had handled his information request.
5. Mr Plunkett subsequently applied to the Scottish Information Commissioner for a decision as to whether the Council had complied with the timescales for response under FOISA.
6. The Commissioner notified the Council of the application made by Mr Plunkett and invited its comments.



The Commissioner's Analysis and Findings

7. The Commissioner is satisfied that the Council responded to Mr Plunkett's information request within the timescale set down by section 21(1) of FOISA. Mr Plunkett submitted his request by email, which means that it was deemed to have been received by the Council on the same day (section 74(2)(b)). However, the 20 working day period begins on the day *after* a request for review is received (as is made clear in section 21(1)). The twentieth working day was 7 October 2005, the day on which the Council gave a notice to Mr Plunkett. In terms of section 74(1)(a)(ii) of FOISA, any reference in FOISA to a notice being given is construed as a reference to its being posted. Consequently, provided that a public authority posts a notice on the twentieth working day, the notice will be considered to have been given within the relevant timescales.

Decision

The Commissioner finds that Dumfries & Galloway Council (the Council) fully complied with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA) in the manner in which it responded to the information request made by Mr Plunkett.

Appeal

Should either Mr Plunkett or Dumfries & Galloway Council wish to appeal the 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 of receipt of this notice.

Margaret Keyse
Head of Investigations
8 February 2006

