



Scottish Information
Commissioner

Decision 049/2005 – Ms P M Uprichard and Fife Council

Request for information relating to a planning application made to Fife Council

Applicant: Ms P M Uprichard

Authority: Fife Council

Case No: 200502514

Decision Date: 21 November 2005

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



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Failure of Fife Council to respond to an information request and subsequent request for review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002

Facts

1. On 8 June 2005, Ms Uprichard made an information request to Fife Council (the Council) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In her letter, Ms Uprichard requested to know whether a figure of £7 million referred to in a planning application dated October 2002 was different to a figure of £7 million contained in a condition attached to planning permission which had been granted in December 2004, and stated that she would like to know if the condition was being enforced.
2. The Council did not respond to Ms Uprichard's information request.
3. Ms Uprichard then wrote to the Council on 25 July 2005 requesting that it reviewed its decision to withhold the information. Again, she did not receive a response from the Council.
4. On 29 August 2005, Ms Uprichard applied to the Scottish Information Commissioner, requesting that he investigate the Council's refusal to respond to her request for information and to her subsequent request for review.
5. This Office notified the Council of the application made by Ms Uprichard and invited its comments on 14 September 2005. The Council responded on 30 September 2005, stating that it did not accept that Ms Uprichard's request for information to be a request for recorded information as defined in section 73 of FOISA, but rather that it considered her request to be a request for an opinion or comment on information which was already held by Ms Uprichard.
6. However, on 29 September 2005, Fife Council wrote to Ms Uprichard, responding to her request for information in full.



Decision

Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, I must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a Decision Notice to both the applicant and the public authority.

I am satisfied that Ms Uprichard made a request for information to the Council on 8 June 2005 which was valid under the terms of section 1(1) of FOISA. In cases such as these, it is often difficult to separate a request for an opinion or comment from an information request. However, if a public authority holds recorded information which would answer such a request, then the request will be a valid request for information under section 1(1) of FOISA.

Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days to response to a request for information from receipt of the request.

Additionally, section 21(5) of FOISA states that authorities must give notice to the applicant of the action that it has taken no later than 20 days after receiving a requirement for review. I find that the Council did not respond to Ms Uprichard's request that it review its decision to withhold information within the time specified in section 21(5) of FOISA.

I therefore find that the Council did not deal with Ms Uprichard's request for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with section 10(1) and section 21(5).

In view of the fact that Fife Council responded to Ms Uprichard's request on 29 September 2005, I do not require any remedial steps to be taken by Fife Council.

Appeal

Should either party 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 of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
21 November 2005