

# Decision Notice



Decision 180/2013 Mr D and Dumfries and Galloway Council

Failure to comply with technical requirements of FOISA

Reference No: 201301693

Decision Date: 21 August 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 Dumfries and Galloway 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 D.

## Background

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1. On 15 May 2013, Mr D wrote to the Council requesting certain specified information.
2. The Council responded on 12 June 2013, providing only a partial response to his request for information.
3. On 20 June 2013, Mr D wrote to the Council requesting a review of its failure to respond to his request in full within 20 working days.
4. Although there was contact between the Council and Mr D, Mr D did not receive a response to his requirement for review and, on 23 July 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr D 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 1 August 2013, the Council was notified in writing that an application had been received from Mr D and was invited to comment on the application.
7. The Council responded on 7 August 2013 and its submissions are considered below.



## Commissioner's analysis and findings

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### *Information request*

8. Mr D received a partial response to his request for information on 12 June 2013, but did not receive the full response until 21 June 2013. The Council explained that the reason for the delay was due to staffing.
9. 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.
10. Since the Council did not provide a full response to Mr D's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.

### *Requirement for review*

11. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of a requirement for review request to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
12. Mr D sought a review on 20 June 2013. The Council told the Commissioner that a compliance review panel was held on 11 July 2013, and that the review outcome was posted to Mr D on 17 July 2013. Once it had been identified that Mr D had not received his review outcome, the Council sent a further copy to Mr D on 14 August 2013. Mr D has confirmed receipt.
13. Mr D informed the investigating officer that he suspected the letter which was sent to him on 14 August 2013 was only prepared after he had made an application to the Commissioner and that he wanted this point to be investigated. If the letter had in fact been sent when the Council said it had, the Council would have complied with section 21(1). If the letter had not been sent until later, the Council would have failed to comply with section 21(1).
14. Submissions were sought from the Council on this point. Unfortunately, the Council does not have an outgoing mail book, which could have evidenced that the letter had been sent on 17 July 2013. However, the Council was able to provide the Commissioner with documentary evidence that the letter was prepared on 17 July 2013. The Council have also assured the Commissioner that the review response was sent out on the date shown in the letter.
15. The Commissioner is required to come to a conclusion, on the balance of probabilities, as to whether the letter was sent on 17 July 2013. In the light of the information provided by the Council, she is satisfied that it was. As such, the Commissioner has concluded that the Council complied with section 21(1) in responding to Mr D's requirement for review.
16. Given that the Council has responded to Mr D's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr D's application.



## DECISION

The Commissioner finds that 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 D, in particular by failing to respond to Mr D's request for information within the timescale laid down by sections 10(1) FOISA.

Given that the review response has now been provided to Mr D, the Commissioner does not require the Council to take any action in response to this failure.

## Appeal

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Should either Mr D or Dumfries and Galloway 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**  
**21 August 2013**



## Appendix

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### Relevant statutory provisions

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

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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; or

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