

# Decision Notice



Decision 055/2008 Mr X and Falkirk Council

Failure to respond to a request for information within the appropriate timescales and failure to respond to a request for review

Reference No: 200800299  
Decision Date: 17 April 2008

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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 Falkirk 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 X.

## Background

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1. On 25 July 2007, Mr X wrote to the Council requesting all information concerning the death of his son.
2. The Council eventually responded to Mr X on 9 January 2008, after he had contacted the Council to establish the progress of his request for information. In this response the Council's decision was to withhold the information requested under sections 34 and 38 of FOISA. In this response the Council also apologised for its failure to respond to Mr X regarding his initial request within the appropriate timescale, confirming that the Council's failings in this regard were "unacceptable".
3. On 29 January 2008, Mr X wrote to the Council requesting a review of its decision.
4. Mr X did not receive a response to his request for review and on 28 February 2008 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 X 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. The case was then allocated to an investigating officer.

## Investigation

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6. On 17 March 2008, the Council was notified in writing that an application had been received from Mr X and was invited to comment on that application, all in terms of section 49(3)(a) of FOISA.



7. The Council responded on 28 March 2008, accepting that it failed to respond to Mr X's request for review. The Council added that the failure to respond was not down to a failure in the Council's procedures but to a particular individual's failure to follow these procedures. The Council acknowledged that this was "a wholly unsatisfactory situation", confirming that an apology had been given to Mr X and that a review was now being undertaken. No mention was made, however, of the Council's failure to respond to the initial request for information within the relevant timescales under FOISA.
8. The Council wrote to Mr X on 10 April 2008 in response to his request for review.

### **Commissioner's analysis and findings**

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9. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant to this case.
10. The Commissioner finds that the Council failed to respond to Mr X's request for information within the 20 working days allowed by section 10(1) of FOISA.
11. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant here.
12. The Commissioner also finds that the Council failed to respond to Mr X's requirement for review within the 20 working days allowed under section 21(1) of FOISA.
13. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.
14. The Commissioner notes that the Council has now written to Mr X in response to his requirement for review, and has apologised to Mr X for the delay in responding to the requirement for review.

### **DECISION**

The Commissioner finds that Falkirk 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 X, in particular by failing to respond to Mr X's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Council has now responded to the requirement for review, the Commissioner does not require Falkirk Council to take any action in response to these failures.



## Appeal

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Should either Mr X or Falkirk 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 Investigations**  
**17 April 2008**



## 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.

##### 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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##### 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.

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