

# Decision Notice



Decision 157/2011 Mr Mike Shepherd and Aberdeen City Council

Compliance with timescales

Reference No: 201101320  
Decision Date: 11 August 2011

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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 Aberdeen City 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 Shepherd.

## Background

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1. On 14 March 2011, Mr Shepherd wrote to the Council requesting information on the proposed City Garden Project.
2. The Council acknowledged Mr Shepherd's request on 15 March 2011, indicating that it would respond by 11 April 2011.
3. On 13 April 2011, having received no response to his request, Mr Shepherd wrote to the Council requesting a review of its failure to reach a decision on the request.
4. On 19 May 2011, the Council wrote to Mr Shepherd and informed him that its review panel had met that day. In what it considered to be the outcome of its review, the Council apologised for the time taken to respond to his request and stated that it hoped to send a response shortly.
5. Mr Shepherd did not receive any further response to his requirement for review and on 17 July 2011 he wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Shepherd 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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7. On 21 July 2011, the Council was notified in writing that an application had been received from Mr Shepherd and invited to comment on the application. This letter noted that although the Council had written to Mr Shepherd in response to his request for review, the response did not appear to satisfy the requirements of section 21 of FOISA.
8. The Council responded on 29 July 2011, explaining that due to a clerical error within the Freedom of Information Compliance Team, there had been a long delay in passing the request to the relevant service area. The Council apologised, indicating that it had taken steps to address the problem and aimed to provide a response to Mr Shepherd by 15 August 2011. It also commented on the actions of the review panel and these comments will be considered further below.

## 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 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. The Council acknowledged that, having received Mr Shepherd's request for information of 14 March 2011, it did not provide any response. The Commissioner therefore finds that the Council failed to respond to Mr Shepherd's request for information of 14 March 2011, within the 20 working days allowed by section 10(1) of FOISA.
11. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant to this case.
12. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
  - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
  - b. substitute for any such decision a different decision; or
  - c. reach a decision, where the complaint is that no decision had been reached.
13. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision on the information request, in line with section 21(4)(c) of FOISA.



14. The Commissioner has considered the contents of the letter and accompanying documentation sent to Mr Shepherd by the Council on 19 May 2011, and must conclude that the Council's purported review did not produce any of the outcomes provided for in section 21(4) of FOISA. Instead, it simply apologised for the delay in responding to the request and advised that the Freedom of Information Team hoped to respond shortly. The Commissioner is unable to accept that this response met the requirements of section 21(4) of FOISA.
15. Specifically, the review did not comply with the requirements of section 21(4)(c). The Commissioner also takes the view that the combined effect of section 21(1), (4) and (5) is that the outcome of the review must be determined, intimated to the applicant *and implemented* within the statutory period of 20 working days. Clearly, this did not happen – and indeed has not happened yet.
16. The Commissioner finds that the Council failed to carry out a review as required by section 21 of FOISA, and in particular sections 21(4) and (5), within the 20 working days allowed by section 21(1).
17. The Council has acknowledged that its review outcome did not meet the requirements of section 21 of FOISA. The Commissioner also notes that the Council has confirmed it is taking steps to ensure that review panels are clear about their remit and the need to provide outcomes that satisfy the terms of section 21. In the circumstances of this particular case, however, a proper outcome to Mr Shepherd's requirement for review remains outstanding.

## DECISION

The Commissioner finds that Aberdeen City Council (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 Shepherd, in particular by failing to respond to Mr Shepherd's request for information within the timescale laid down by sections 10(1) and by failing to carry out a review, in line with sections 21(4) and (5) of FOISA, within the timescale required by section 21(1).

In order to comply with Part 1 of FOISA, the Commissioner now requires the Council to comply with Mr Shepherd's requirement for review, in accordance with section 21(4), and to notify him of the outcome of that review in accordance with section 21(5), by 27 September 2011.

Decision 157/2011  
Mr Mike Shepherd  
and Aberdeen City Council



## **Appeal**

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Should either Mr Shepherd or the 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 Enforcement**  
**11 August 2011**



## Appendix

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### Relevant statutory provisions

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

##### 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

...

##### 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.
- ...
- (4) The authority may, as respects the request for information to which the requirement relates-
    - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
    - (b) substitute for any such decision a different decision; or
    - (c) reach a decision, where the complaint is that no decision had been reached.
  - (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.