

# Decision Notice



Decision 182/2011 Ms Marjory Smith and Comhairle nan Eilean Siar

Failure to respond to request and requirement for review

Reference No: 201101474

Decision Date: 05 September 2011

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether Comhairle nan Eilean Siar (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Ms Smith.

## Background

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1. On 11 April 2011 Ms Smith made a request to the Council through the 'Whatdotheyknow' website<sup>1</sup> in the following terms:  
"Could you tell me the full costs of this holiday [the Friday holiday for William Wales and Kate Middleton's wedding] to Comhairle nan Eilean Siar, including staff cover and other costs incurred."
2. The Council acknowledged the request through the 'Whatdoyouknow' website on 13 April 2011 but did not provide a substantive response.
3. Ms Smith wrote to the Council (again through the 'Whatdoyouknow' website) on 14 May 2011 requesting a review, and on receiving no response to this communication, wrote again through the website on 14 June 2011.
4. A Council officer did respond to Ms Smith through the website on 14 June, to inform her that her request would be passed to a colleague to deal with as she (the Council officer) no longer processed Freedom of Information requests.
5. As she had still received no substantive response from the Council by 10 August 2011, Ms Smith wrote to the Commissioner on that date, stating that she was dissatisfied with the Council's failure to respond and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Ms Smith 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.
7. The case was then allocated to an investigating officer.

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<sup>1</sup> <http://www.whatdotheyknow.com/>



## Investigation

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8. On 17 August 2011, the Council was notified in writing that an application had been received from Ms Smith and was invited to comment on the application as required by section 49(3)(a) of FOISA.
9. At the time of writing this decision the Commissioner had not received a response from the Council to his letter of 17 August 2011 and so far as he is aware, as at this time no response had been issued to Ms Smith.

## Commissioner's analysis and findings

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10. 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.
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 a review, again subject to exceptions which are not relevant to this case.
12. In the circumstances, the Commissioner concludes that the Council failed to deal with Ms Smith's request for information or her requirement for review within the respective periods of 20 working days specified by sections 10(1) and 21(1) of FOISA.
13. Consequently, the Commissioner now requires the Council to deal with Ms Smith's requirement for review, in accordance with the requirements of section 21 of FOISA (the relevant provisions of which are set out in the appendix to this decision).

## DECISION

The Commissioner finds that Comhairle nan Eilean Siar (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 Ms Smith, in particular by failing to respond to Ms Smith's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the Council to comply with Ms Smith's requirement for review, in accordance with section 21 of FOISA, by 21 October 2011.

Decision 182/2011  
Ms Marjory Smith  
and Comhairle nan Eilean Siar



## Appeal

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Should either Ms Smith or Comhairle nan Eilean Siar 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**  
**05 September 2011**



## 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.

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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

...

##### 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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- (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.

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