

# Decision Notice



Decision 112/2013 Mr Martin Williams and Stirling Council

Failure to comply with timescales

Reference No: 201300445  
Decision Date: 17 June 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

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



## Summary

This decision considers whether the Stirling 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 Williams on 2 November 2012.

## Background

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1. On 2 November 2012, Mr Williams wrote to the Council requesting certain specified information.
2. The Council responded on 29 November 2012. It provided some information and notified Mr Williams that other information was not held.
3. On 11 December 2012, Mr Williams wrote to the Council requesting a review of its response.
4. On 18 January 2013, the Council wrote to Mr Williams and apologised for failing to respond by 14 January 2013, the statutory deadline.
5. Mr Williams did not receive a response to his requirement for review and, on 7 February 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.
6. Following further correspondence with both the Council and Mr Williams, the application was validated by establishing that Mr Williams 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 failure to respond to that request. The case was then allocated to an investigating officer.

## Investigation

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7. On 28 May 2013, the Council was notified in writing that an application had been received from Mr Williams and was invited to comment on the application, as required by section 49(3)(a) of FOISA.



8. The Council responded on 11 June 2013, explaining that for various reasons it had not yet completed the review. The Council also explained that due to questions over the validity of Mr Williams' request, requirement for review and application to the Commissioner (the subject of the correspondence referred to in paragraph 6 above), it had taken no action in respect of the requirement for review between 22 February 2013 and 23 April 2013, when the Commissioner confirmed that the application was valid.
9. The Council also acknowledged that, on any reckoning, it had failed to provide Mr Williams with a response to his requirement for review within the time allowed. It indicated that a response would be provided by 21 June 2013.

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

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10. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant to this case.
11. Since the Council did not provide a response to Mr Williams's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA. While acknowledging that it may have been reasonable for the Council (in the circumstances of this particular case) to await the Commissioner's confirmation that Mr Williams' application was valid before proceeding with the review, it is now well over 20 working days from the communication of that confirmation.
12. While the Commissioner notes the Council's intention to provide a response to Mr Williams' requirement for review by 21 June 2013 (an intention she hopes the Council will fulfill), she requires the Council to respond to the requirement for review, in accordance with section 21 of FOISA, by 1 August 2013.

### **DECISION**

The Commissioner finds that Stirling 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 Williams, by failing to respond to his requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner therefore requires the Council to comply with Mr Williams' requirement for review, in accordance with the requirements of section 21 of FOISA, by 1 August 2013.



## **Appeal**

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Should either Mr Williams or Stirling 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**  
**17 June 2013**



## Appendix

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### Relevant statutory provisions

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

##### 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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