

# Decision Notice



Decision 216/2013 Alan Duthie and University of Aberdeen

Failure to respond to request and requirement for review

Reference No: 201302132  
Decision Date: 2 October 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 the University of Aberdeen (the University) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Duthie.

## Background

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1. On 9 July 2013, Mr Duthie wrote to the University requesting certain specified information.
2. Although Mr Duthie received an acknowledgement on 10 July 2013, he received no response to his request.
3. On 12 August 2013, Mr Duthie wrote to the University requesting a review in respect of its failure to respond.
4. Mr Duthie did not receive a response to his requirement for review and, on 12 September 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 Duthie 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 16 September 2013, the University was notified in writing that an application had been received from Mr Duthie and was invited to comment on the application. No submissions were received by the University.



## Commissioner's analysis and findings

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7. 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 qualifications which are not relevant in this case.
8. Since the University did not provide a response to Mr Duthie's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
9. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain qualifications which are not relevant in this case.
10. Since the University did not provide a response to Mr Duthie's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
11. The remainder of Section 21 provides the statutory framework within which a review is to be carried out. As no review has been carried out in this case, the Commissioner finds that the University failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

## DECISION

The Commissioner finds that the University of Aberdeen (the University) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Duthie, in particular by failing to respond to Mr Duthie'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 University to undertake a review in respect of Mr Duthie's request for information, in line with the requirements of section 21 of FOISA, within 45 calendar days after the date of intimation of this decision notice, that is by **Monday 18 November 2013**.

Decision 216/2013  
Mr Alan Duthie  
and the University of Aberdeen



## Appeal

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Should either Mr Duthie or the University of Aberdeen 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**2 October 2013**



## 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.
- (2) If-
- (a) the authority is the Keeper of the Records of Scotland; and
- (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,

subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.

- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (7) Regulations under subsection (6) may-
  - (a) prescribe different days in relation to different cases; and
  - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
  - (a) the requirement is vexatious; or
  - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.