

# Decision Notice 012/2020

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## Fixed Penalty Notices for Dog Fouling

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**Applicant: The Applicant**

**Public authority: Angus Council**

**Case Ref: 201901229**



Scottish Information  
Commissioner



## Summary

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The Council was asked about the number of fixed penalty notices issued for dog fouling.

Following a request for review of its failure to respond, the Council provided what it considered to be the information requested, together with an explanation of the circumstances surrounding, and decisions taken relating to, its handling of the request.

The Applicant applied to the Commissioner for a decision, as she was not only dissatisfied with the way in which the Council had handled her request, but also believed the information provided was incomplete and unclear.

The Commissioner investigated. While the Commissioner was satisfied that the Council had provided the information requested, he also found it had failed to respond to the request within statutory timescales and had failed to comply with the requirements of FOISA in its handling of the request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement);  
10(1) (Time for compliance)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 3 November 2018, the Applicant made a request for information to Angus Council (the Council). The information requested was the number of fixed penalty notices (FPNs) issued for dog fouling in a particular area over the last 24 months, and how many of those notices had been paid.
2. Having received no response within 20 working days, the Applicant wrote to the Council on 27 December 2018, requesting a review of its failure to respond and pointing out that its website contained no details of how to request a review.
3. On 21 January 2019, the Council provided the Applicant with its review outcome, in which it considered various points under the following headings:

(i) *Imposed channel restrictions*

The Council confirmed the letter had been recorded as having been received in its mail room on 6 November 2018. It was subsequently established that the request had not been received by the Chief Executive's Unit (CEU), and so no response had been issued.

While the Council considered this unfortunate, it stated that her contact fell outwith the practice previously recommended to the Applicant, i.e. requiring her to raise concerns/service requests via its web-based ACCESSline. In this case, the request had been addressed to the Chief Executive, and the requirement for review had been addressed to Legal and Democratic Services.

The Council summarised the restricted channels of communications set out in a letter issued to the Applicant on 17 August 2018, which had been imposed due to frequency, volume and unreasonable persistency of matters raised, the manner in which they were raised and the resultant burden on Council resources and staff. The conditions included asking that information requests were submitted by email directly to a specified email address, the Council, confirming that it would continue to respond.

The Council listed a number of alleged breaches of the conditions (which included the requirement for review dated 27 December 2018). As such, the Council stated it was continuing to impose the restrictions and would not respond to communications outwith the permitted channels.

(ii) *Validity of requirement for review*

The Council stated that, as the requirement for review had been addressed to the Chief Executive, it did not comply with the channel restrictions previously imposed. Having reviewed its earlier communications with the Applicant, it established that the letter of 17 August 2018 did not contain the appropriate document which set out how to request a review of its decision to impose channel restrictions. This document also set out how to request a review, and to whom it should be addressed in the normal course of events. Given this, the Council agreed to process the requirement for review in the normal manner, but advised the Applicant that all future requirements for review should be sent by email to a specified email address, in the same way as requests for information.

(iii) *Processing of mail – mislaid letter*

The Council confirmed the letter had been recorded as having been received in its mail room on 6 November 2019, but could not be traced within the CEU. Given there was no requirement, at that time, to sign for Special Delivery letters, the Council was unable to establish who in the CEU had taken receipt of the letter thereafter. The Council explained it had since modified its processes to require a signature for Special Delivery/signed for correspondence.

(iv) *Information to be provided in response to a request for information*

The Council stated that, as the Applicant had submitted her original request via an incorrect channel, it was accepted as having been received on 27 December 2018. The Council disclosed what it described as the information requested for 2016/17, 2017/18 and 2018/19 in a separate response.

4. On 22 July 2019, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with Council's handling of her request in respect of:

- (i) the Council's failure to recognise the date of receipt of her request as 6 November 2018 (based on her alleged failure to comply with restrictions set on the channels of communication she could use), resulting in it failing to respond within statutory timescales.
- (ii) the Council limiting the submission of information requests and requirements for review to email format, and to a specific email address.
- (iii) the response provided by the Council being incomplete and unclear.

## Investigation

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5. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
6. On 12 November 2019, the Council was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions. These focused on:
  - (i) why the Council informed the Applicant that, as she had submitted her initial (mis)laid request via the wrong channel, it deemed the date of receipt of her request to be 27 December 2018 (i.e. when she submitted her requirement for review of the Council's failure to respond) and, given this, why the Council considered it necessary to carry out a review.
  - (ii) why the Council considered it could limit the submission of information requests and requests for reviews to email format to a specific email address, and whether this was a restriction imposed solely on the Applicant, or was it Council policy for all requesters.
  - (iii) whether, in providing its response, the Council provided sufficient advice and assistance to allow the Applicant to understand the information provided.

It was also asked about the searches undertaken to identify and locate the information.

8. The Council provided submissions to the Commissioner.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

### Section 1(1) – General entitlement

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. These qualifications are not relevant in this case.
11. The Commissioner must determine whether, in responding to the Applicant's request, the Council complied with section 1(1) of FOISA.
12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information (or more information than has been provided).
13. In her application to the Commissioner, the Applicant was dissatisfied with the Council's response, in which it provided information covering each of the periods 2016/17, 2017/18

and 2018/19 on the number of FPNs issued and paid. She was unclear as to whether these periods were financial years or otherwise, and unsure about what the entries listed as “n/a” represented in the context of the response.

14. In its submissions to the Commissioner, the Council explained that all FPNs were recorded on a spreadsheet, which was searched against the area covered by the request. As the request sought FPNs issued and paid over the last 24 months (i.e. prior to 6 November 2018), the request covered three financial years. The data provided covered the number of FPNs issued and the number paid. Where no FPNs had been issued, no payments could be recorded. The Council clarified that “n/a” commonly stands for “not available” or “not applicable”.
15. The Council explained that, had it provided data for the full 24-month period from November 2016 to November 2018, the total figures for the number of FPNs issued and paid would have been the same. The Council submitted that the information disclosed was accurate, self-explanatory and required no further explanation.
16. Having considered the relevant submissions, the information requested and that provided, the Commissioner accepts that the Council took adequate, proportionate steps in the circumstances to identify and locate any information it held which was relevant to the request. He accepts that any relevant information would have been identified using the searches described by the Council.
17. While the Commissioner notes that the Council disclosed data for a wider period than stated in the request, it is clear that the information provided satisfies the terms of the request. He accepts that, had the Council provided figures solely for the 24-month period immediately preceding the request, the data provided would have been the same.
18. In the Commissioner’s view, the information provided in the Council’s response was clear, and he can see no requirement for the Council to have provided any further advice or assistance to help in understanding the data disclosed. In providing a breakdown of the data by financial year, the Commissioner notes that the Council gave a further level of detail not requested by the Applicant, which was clear and easy to understand, while still falling within the scope of the request. He accepts that the abbreviation “n/a” is widely understood in the sense explained by the Council in its submissions.
19. In conclusion, and in respect of the information disclosed, the Commissioner is satisfied that the Council responded to the request in accordance with Part 1 of FOISA.

### **Handling of request**

20. As indicated above, the Applicant identified a number of respects in which she was dissatisfied with the Council’s handling of the request. Basically, these related to handling in the context of requirements relating to her communications more generally, imposed by the Council.
21. The Council was asked to explain why, having accepted the original request was received in its mail room on 6 November 2018, it informed the Applicant that it deemed the date of receipt to be 27 December 2018, on the basis that the original request had been submitted via the “wrong channel”. It was also asked to explain whether its restriction on submitting information requests in email format only, to a specified email address, was limited to the Applicant.

22. In response, the Council confirmed that the restriction in question was limited to the Applicant. It explained there was a long-established pattern, over several years, where the Applicant had raised various issues in a considerable number of lengthy letters and telephone calls to both Council staff and its customer helpline, which covered a variety of issues, but also included valid information requests. These, the Council submitted, had placed considerable demands on Council resources, resulting in unreasonably stressful situations for staff members.
23. The Council argued that the restriction was not to block any valid information request, but to ensure that the Head of Legal and Democratic Services was aware of the communications and their impact, as a whole, on Council resources, and also to ensure that valid information requests were properly responded to.
24. The Council was also asked why it considered it necessary to carry out a review, given that it deemed the date of receipt of the request to be 27 December 2018. In response, the Council submitted that the review was prompted as the Applicant had not been issued with a response within the statutory timeframe.
25. The Council was further asked to comment on why it listed the Applicant's requirement for review in the list of breaches (detailed in its review outcome). In response, the Council submitted this related to the frequency / manner of contact and not to the information request per se.
26. In relation to its decision to reconsider, within its review outcome, the restrictions on channels of communication imposed on the Applicant, the Council explained it had been seeking to address all open issues to avoid duplication of work. It submitted it had taken the step of restricting information requests to a specific email address due to the extreme circumstances relating to the Applicant, as explained above.

#### *Commissioner's views on handling*

27. Having considered the relevant submissions and the circumstances of the case, the Commissioner has taken account of the following factors:
  - The Council has accepted the initial (mislaidd) request, addressed to the Chief Executive, was received in its mail room on 6 November 2018.
  - The Applicant emailed her requirement for review to the Head of Legal and Democratic Services on 27 December 2018, based on the Council's failure to respond within statutory timescales.
  - On 21 January 2019, the Council issued its review outcome, confirming it had received the initial request on 6 November 2018, and the requirement for review on 27 December 2018. The Council explained that, as the request had gone astray, no response had been issued. It further explained that, as the initial request had been submitted via the "wrong channel", it was not considered to have been received until 27 December 2018. The Council did not acknowledge, nor apologise for, any late response, despite it acknowledging the original request had actually been received on 6 November 2018.
  - That same date, the Council issued a response to the request, providing the information requested and stating it received the initial request (dated 3 November 2018) on 27 December 2018. This initial response included notice of the right to request a review and subsequent appeal. It did not acknowledge, or apologise for, any delay in responding.

28. In the Commissioner's view, the Council had no locus to inform the Applicant that, given her request had been addressed to the "wrong channel", it did not comply with its restriction on channels of communication. It was a request for information under section 1(1) of FOISA (and the Council does not appear to have offered any reason, under FOISA, why it should have been dealt with as anything else).
29. While the Commissioner accepts that a public authority may decide to restrict an individual's channels of communication in respect of other matters (subject, of course, to any other relevant legislation), he would stress that there is no provision in FOISA that permits such restrictions to be imposed in relation to information requests and/or requirements for review. Neither does FOISA contain any provision permitting an authority to restrict information requests and requirements for review to a particular format (at least, not in any way covered by the restrictions applied by the Council here), or to a specific single point of contact.
30. The Commissioner recognises that it is often good practice for a public authority to have a central point for receipt of information requests in general, and there may be merit in advising applicants to use a specific route for communications in particular cases. However, should an individual submit an information request to that authority via a different route (e.g. to a different email or postal address within that authority), or in a different recorded format, the authority cannot use this as a reason for circumventing its obligations under FOISA.
31. It follows that the Council had no right to determine that the request in this case was received other than on 6 November 2018, the date on which the request was actually received. In any case, it was wholly inconsistent with the Council's decision to carry out a review for it to treat the requirement for review as the original request.
32. In the above respects, therefore, the Commissioner must conclude that the Council failed to comply with the Applicant's basic right to have her information request responded to, in terms of section 1(1) of FOISA.
33. In addition, the Commissioner considers it poor practice for the Council to have included, in its review outcome, its reconsideration of the restrictions on the Applicant's channels of communication. It should have been made clear, in some way, that this was a matter unrelated to the application of FOISA. Neither does he consider that the Council should have listed the Applicant's requirement for review of 27 December 2018 as a breach [of these channel restrictions], given that there is no provision in FOISA to restrict the means of requesting a review.

### **Section 10(1) – Time for compliance**

34. 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. This is subject to qualifications which are not relevant in this case.
35. It is a matter of fact that the Council did not provide a response to the Applicant's original information request of 3 November 2018 within 20 working days, so the Commissioner finds it failed to comply with section 10(1) of FOISA.



## Decision

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The Commissioner finds that Angus Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that the Council provided the information requested, and so complied with Part 1.

However, the Commissioner also finds that the Council failed to comply with Part 1 of FOISA by:

- (i) failing to respond to the Applicant's initial request within statutory timescales, and by so doing, breached section 10(1) of FOISA;
- (ii) more generally, in its handling of the request in relation to separate restrictions on communication, failed to comply with section 1(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures in response to the Applicant's application.

## Appeal

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Should either the Applicant or the Council 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.

**Margaret Keyse**  
**Head of Enforcement**

**23 January 2020**

### 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
  - (b) in a case where section 1(3) applies, the receipt by it of the further information.

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