



Scottish Information  
Commissioner

**Decision 064/2006 Marjory Kennedy and Scottish Water**

**Request for information about a water pipe**

**Applicant: Marjory Kennedy (Shepherd & Wedderburn)**  
**Authority: Scottish Water**  
**Case No: 200600173**  
**Decision Date: 12 April 2006**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## Decision 064/2006 Marjory Kennedy and Scottish Water

### ***Failure of Scottish Water to respond to an information request and subsequent request for review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002***

#### **Facts**

---

1. Shepherd & Wedderburn, a firm of solicitors, wrote to Scottish Water on behalf of their client Marjory Kennedy on 19 April 2005, to ask for all information held by Scottish Water in connection with the water pipe running through Mrs Kennedy's property which burst in June 2001.
2. Shepherd & Wedderburn sent reminders on 21 June and 15 July 2005, and eventually received information from Scottish Water on 10 August 2005. However, on 23 September 2005 Shepherd & Wedderburn wrote back to say that they were not satisfied that they had been supplied with all relevant information held by Scottish Water.
3. Following a series of phone calls, Scottish Water wrote to Shepherd & Wedderburn on 2 November 2005, stating that it held no other records than those previously supplied.
4. In a phone call of 7 November 2005, the commercial lawyer for Scottish Water told Shepherd & Wedderburn that he understood that maintenance reports for the water pipe had been sent to them. On hearing that no such reports had been received, he promised to contact the official who dealt with this issue.
5. After another series of phone calls in November 2005, Shepherd & Wedderburn received an email from Scottish Water explaining that there had been some confusion about where the information might be held, but that Scottish Water was awaiting a report from a workflow scheduler who should have access to information about work carried out in the area.
6. No further communication was received from Scottish Water and on 9 December 2005 Shepherd & Wedderburn requested a review of the responses they had received to their request of 19 April 2005.
7. No reply was received and on 23 January 2005 Shepherd & Wedderburn applied to the Scottish Information Commissioner for a decision on the matter.
8. Scottish Water was given notice in writing of the application made by Mrs Kennedy on 25 January 2006 and its comments were invited.



9. Scottish Water responded on 10 February 2006. It expressed regret that a review had not been provided timeously to Shepherd & Wedderburn, and confirmed that information contained in maintenance records should exist. However, despite extensive searches it had been unable to locate this information.

## **Decision**

---

Scottish Water failed to respond to the request dated 19 April 2005 until 10 August 2005, and therefore did not deal with this request for information in accordance with section 10(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), which states that a Scottish public authority must comply promptly with a request for information and in any event by not later than the twentieth working day after the receipt by the authority of the request.

Scottish Water failed to respond to the request for a review of its response (dated 9 December 2005). It therefore failed to comply with Section 21(1), which states that a Scottish public authority must comply promptly with a request for review and in any event by not later than the twentieth working day after the receipt by the authority of the request for review.

Scottish Water has informed the Commissioner that it will arrange for a final and more thorough search to take place in order to establish whether or not the information requested is held by Scottish Water. In order to comply with Part 1 of FOISA, the Commissioner requires Scottish Water, in terms of section 49(6) of FOISA, to provide Mrs Kennedy, through Shepherd & Wedderburn, with all information held which relates to her request, or alternatively to issue her with a notice under section 17(1) of FOISA (information not held) or a refusal notice under section 16(1).

This must be done by Scottish Water within 45 days of receipt of this notice.

## **Appeal**

---

Should Mrs Kennedy or Scottish Water wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.



**Margaret Keyse**  
**Head of Investigations**