

# Decision Notice



Decision 021/2009 Mr James Elder and East Lothian Council

Failure to respond

Reference No: 200801401

Decision Date: 25 February 2009

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**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

This decision considers whether East Lothian 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 Elder.

The Council failed to respond to Mr Elder's information request and his request for review. Following an investigation, the Commissioner found that the Council had failed to comply with the relevant timescales specified in sections 10(1) and 21(1) of FOISA.

## Background

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1. On 24 November 2008 Mr Elder wrote to the Council requesting the following information:
  - The options regarding the closure of Cockenzie House Nursing Home
  - The costs involved in setting up Greenfield Park Nursing Home.
2. The Council responded on 22 December 2008 to acknowledge the date as the twentieth working day after receipt of the request and to advise Mr Elder that, as the officers responsible were on holiday until 5 January 2009, the response would be late.
3. On 22 December 2008, Mr Elder wrote to the Council requesting a review on the grounds that it had failed to provide a response to his request of 24 November 2008.
4. Mr Elder did not receive a response to his request for review and on 29 January 2009 he 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 Elder 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. The case was then allocated to an investigating officer.



## Investigation

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6. On 2 February 2009, the Council was notified in writing that an application had been received from Mr Elder and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Council acknowledged the investigating officer on 3 February 2009 and responded on the 16 February 2009, citing various points in mitigation but also confirming that it had failed to respond to Mr Elder within the required timescales and apologising for these failures. Within the letter, the Council undertook to complete its consideration of Mr Elder's request without delay, although it did not indicate precisely when he could expect a response.

## Commissioner's analysis and findings

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8. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
9. Although the Council contacted Mr Elder on the twentieth working day to advise that it had failed to meet the deadline for responding to the request, it failed to provide a decision as to whether or not the information would be released at that time, nor did it indicate when it would be in a position to issue a response to Mr Elder. The Commissioner finds that the Council failed to fully meet its obligations by complying with the 20 working days allowed by section 10(1) of FOISA.
10. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exemptions which are not relevant in this case.
11. The Commissioner also finds that the Council failed to respond to Mr Elder's requirement for review of 22 December 2008 within the 20 working days allowed under section 21(1) of FOISA.
12. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.
13. The Commissioner notes that the Council has indicated it is now reviewing the information "without further delay", although it has not indicated when it will complete this process. Given the existing delays in responding to Mr Elder's request, the Commissioner finds it appropriate to issue a decision notice which requires the Council to respond to Mr Elder's request by 13 April 2009.



## DECISION

The Commissioner finds that East Lothian 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 Elder, in particular by failing to respond to Mr Elder'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 East Lothian Council to respond to Mr Elder's request by 13 April 2009.

## Appeal

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Should either Mr Elder or East Lothian 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**  
**25 February 2009**



## Appendix

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### 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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#### 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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