

# Decision Notice



Decision 181/2010 Mr Davie Hutchison and City of Edinburgh Council

Failure to carry out a review

Reference No: 201001852

Decision Date: 29 October 2010

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

This decision considers whether City of Edinburgh Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hutchison.

## Background

---

1. On 16 August 2010, Mr Hutchison wrote to the Council requesting a list of vacant privately-held residential properties within the portions of the City Centre and Inverleith council wards that were within the Westminster Parliamentary boundary of Edinburgh North and Leith. For the purposes of this request, Mr Hutchison gave details of what he classified as vacant property.
2. The Council responded on 23 August 2010 by withholding the requested information, which it considered exempt under Sections 36(2) and 39(1) of FOISA.
3. On 25 August 2010, Mr Hutchison emailed the Council requesting a review of its decision.
4. Mr Hutchison did not receive a response to his request for review and on 29 September 2010 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 Hutchison 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

---

6. On 6 October 2010, the Council was notified in writing that an application had been received from Mr Hutchison and was invited to comment on the application, as required by section 49(3)(a) of FOISA.



7. On 26 October 2010 the Council responded to the Commissioner, apologising for the late response. It confirmed that a review had been carried out, advising initially that the outcome had been communicated to him on 30 September 2010: later, it confirmed that the letter had in fact been sent on 4 October 2010.
8. The investigating officer contacted Mr Hutchison on 26 October 2010. Mr Hutchison confirmed that he had received the review decision, but only about a week previously and not earlier in October.

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

---

9. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
10. Although the Council did carry out a review in this case and communicate the outcome to Mr Hutchison, it acknowledged that it had failed to do so within the 20 working days required by section 21(1). Consequently, the Commissioner finds that the Council failed to comply with Mr Hutchison's request for review in accordance with section 21(1) of FOISA.
11. While noting with concern the Council's lack of clarity as to when the review decision was communicated to Mr Hutchison, clearly this has been done. In the circumstances, the Commissioner does not require the Council to take any action in respect of this failure in response to Mr Hutchison's application.

### **DECISION**

The Commissioner finds that the City of Edinburgh 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 Hutchison, by failing to respond to Mr Hutchison's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that a review has now been carried out and the outcome communicated to Mr Hutchison, the Commissioner does not require the Council to take any action in respect of this failure in response to Mr Hutchison's application.



## Appeal

---

Should either Mr Hutchinson or the City of Edinburgh 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**  
**29 October 2010**



## Appendix

---

### 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.

...

##### 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.

...