

# Decision Notice



Decision 019/2013 Mr R Graham Dick and Glasgow City Council

Positioning of parking signs

Reference No: 201202230

Decision Date: 18 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

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## Summary

Mr Dick asked Glasgow City Council (the Council) for information about the positioning of parking signs. The Council failed to respond but, following a review, provided some information to Mr Dick while advising him that it did not hold other information he had asked for.

Following an investigation, the Commissioner found that the Council did hold some of the information it had told Mr Dick that it did not hold. She was satisfied by the end of the investigation that all relevant information had been provided to Mr Dick. She also identified failures to respond within the requisite timescales.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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

## Background

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1. On 27 February 2012, Mr Dick, who had been in correspondence with the Council regarding the issuing of a parking ticket, sent an email to the Council. Within this email, Mr Dick requested information which, in relation to the erection of a specific parking sign, included the following:  
*I therefore require (also in terms of FOISA) copies of all correspondence, internal or external, relating to design, provision and erection of this signage, including the date on which it was erected.*
2. On 31 March 2012, Mr Dick wrote to the Council and requested a review on the basis that no response had been received.



3. The Council notified Mr Dick of the outcome of its review on 3 May 2012. The Council provided Mr Dick with certain information he had requested, but in relation to the above request informed him that the information was not held.
4. On 31 October 2012, Mr Dick wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review 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 Dick 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 responses to that request. The case was then allocated to an investigating officer.

## Investigation

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6. On 15 January 2013, the investigating officer notified the Council in writing that an application had been received from Mr Dick, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to comment on the steps taken to establish what relevant information it held, and on its compliance with relevant timescales.
7. In its submissions, the Council explained the searches it had carried out to ascertain what information it held, with details of the officers consulted and why they were consulted. The Council also accepted that it had failed to comply with the relevant timescales.
8. On 8 February 2013, the Council provided further information to Mr Dick and apologised that the information had not been located and provided in the initial response or at review stage.
9. Mr Dick confirmed receipt of the further information provided by the Council, but was not satisfied that this met his request. He expected further relevant information to be held by the Council.
10. The relevant submissions received from both the Council and Mr Dick will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Dick and the Council and is satisfied that no matter of relevance has been overlooked.



### Information held by the Council

12. 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 certain restrictions which, by virtue of section 1(6), allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. In his application to the Commissioner, Mr Dick commented that he could not accept that the Council held no information falling within the scope of his request. He stated that the signage in question was properly constructed and erected and in his opinion the Council had to hold a correspondence trail. He further commented that the information which had been released during the investigation did not satisfy his concerns.
14. The Council explained the searches and enquiries it carried out to ascertain whether it held information falling within the scope of Mr Dick's request. It further explained that during the investigation it retrieved information which it then provided to Mr Dick. The Council accepted that this information should have been located at an earlier stage and apologised to Mr Dick for the failure.
15. The Council advised that it did not hold any further information, in addition to that located and provided to Mr Dick during the course of the investigation. Mr Dick, however, still expected further information to be held.
16. Having considered all relevant submissions, the Commissioner accepts, on the balance of probabilities, that the Council carried out adequate searches for the information in the course of the investigation and that it does not (and did not, at the time it received the request) hold any further information falling within the scope of Mr Dick's request.
17. However, the Commissioner also finds that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA, by incorrectly notifying Mr Dick when dealing with his request that it did not hold the information requested.

### Technical issues

18. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
19. The Council informed the Commissioner that failure to respond to Mr Dick's request was due to an administrative oversight and that the department in question had no record of having received the request. It acknowledged that this was a recurring issue and explained the remedial measures it had put in place, commenting that Mr Dick's request dated from before these measures.



20. Whilst noting the Council's comments on this matter, the Council did not respond to the request of 27 February 2012 and therefore the Commissioner must find that it failed to respond within the 20 working days allowed by section 10(1) of FOISA.
21. 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 again to exceptions which are not relevant in this case.
22. Mr Dick's requirement for review was dated 31 March 2012. Given that the response to the requirement for review was dated 3 May 2012, the Commissioner finds that the Council failed to comply with section 21(1) of FOISA.

## DECISION

The Commissioner finds that the Glasgow City Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Dick, by failing to identify, locate and provide all the information it held which was covered by the terms of Mr Dick's request.

She also finds that by failing to respond to Mr Dick's request for information and requirement for review within the time laid down by sections 10(1) and 21(1) of FOISA respectively, the Council further failed to comply with Part 1 of FOISA. Given the subsequent provision of information to Mr Dick, the Commissioner does not require the Council to take any action in respect of these failures in response to Mr Dick's application.

## Appeal

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Should either Mr Dick or Glasgow City 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.

**Margaret Keyse**  
**Head of Enforcement**  
**18 February 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

##### 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) ... the receipt by the authority of the request; or

...

##### 17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or

- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,



it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

## **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.

...