

# Decision Notice



Decision 106/2013 Mr Ewen Hardie and Highland Council

Failure to respond to requirement for review

Reference No: 201300970  
Decision Date: 6 June 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

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



## Summary

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

## Background

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1. On 30 November 2012, Mr Hardie wrote to the Council requesting certain specified information.
2. The Council responded on 11 January 2013.
3. On 20 February 2013, Mr Hardie wrote to the Council requesting a review of its decision.
4. Mr Hardie did not receive a response to his requirement for review and on 22 April 2013 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 Hardie 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 15 May 2013, the Council was notified in writing that an application had been received from Mr Hardie and was invited to comment on the application.
7. The Council responded on 3 June 2013 and its submissions are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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8. The Council acknowledged that it had failed to respond timeously to Mr Hardie's requirement for review. It explained that this was due to an administrative error; this happened during a period when staffing within the FOI team was temporarily reorganised.
9. The Council explained that, once the error had been identified, it had carried out a review. Mr Hardie was notified of the outcome on 9 May 2013.
10. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
11. Since the Council did not provide a response to Mr Hardie's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. Given that the Council has now responded to Mr Hardie's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Hardie's application.

## DECISION

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

Given that the Council has now responded to Mr Hardie's requirement for review, the Commissioner does not require the Council to take any action in response to this failure.

Decision 106/2013  
Mr Ewen Hardie  
and Highland Council



## **Appeal**

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Should either Mr Hardie or Highland 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.

**Alison Davies**  
**Deputy Head of Enforcement**  
**6 June 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.

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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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