

# Decision Notice



Decision 240/2013 Mr Roy Mackay and Stirling Council

Failure to respond or carry out a review

Reference No: 201302288

Decision Date: 29 October 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
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St Andrews KY16 9DS  
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## Summary

This decision considers whether Stirling 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 Roy Mackay.

## Background

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1. On 18 April 2013, Mr Mackay wrote to the Council requesting certain specified information.
2. The Council failed to respond to his request within 20 working days and, on 15 July 2013, Mr Mackay wrote to the Council again, requesting a review in respect of its failure to respond.
3. On 2 August 2013, Mr Mackay received a letter from the Council which apologised for the Council's failure to provide a response to his request within the statutory timeframe. The Council informed Mr Mackay that a response to his request would be provided as quickly as possible.
4. On 1 October 2013, Mr Mackay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond 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 Mackay 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 10 October 2013, the Council was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.



7. The Council responded on 23 October 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 confirmed that it had received Mr Mackay's request for review. It had encountered significant difficulties in obtaining the information he had asked for from the Council department concerned. The Council cited internal staffing matters, exacerbated by annual leave commitments of key personnel, plus a high number of other information requests being handled at the same time.
9. The Council acknowledged that, in accordance with section 21(4)(c) of FOISA, it is required to reach a decision where there has been a failure to respond to an information request. It accepted that its letter of 2 August 2013 did not constitute a review, in terms of section 21 of FOISA. The Council stated that a response to Mr Mackay's request should be completed shortly.
10. The Council asked the Commissioner to take into account that it had recently appointed an intern to assist the Chief Governance Officer, and that it anticipated this measure would positively contribute to the Council's ability to comply with the requirements of FOISA despite the difficulties caused by a period of significant disruption within the Council.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
12. Since the Council did not provide a response to Mr Mackay's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. 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.
14. Since the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with them. The Commissioner understands that a review is already underway.



## DECISION

The Commissioner finds that Stirling 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 Mackay, in particular by failing to respond to his request and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the Council to carry out a review and notify Mr Mackay of the outcome of the review by 13 December 2013.

## Appeal

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Should either Mr Roy Mackay or Stirling Council wish to appeal against this decision, they have the right to 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.

**Margaret Keyse**  
**Head of Enforcement**  
**29 October 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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##### 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

...

##### 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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.

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