

# Decision Notice

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## Decision 166/2014 Mr Roy Mackay and Scottish Borders Council

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### **Records of searches: failure to respond within statutory timescales**

Reference No: 201401408

Decision Date: 25 July 2014



Scottish Information  
Commissioner



## Summary

On 17 April 2014, Mr Mackay asked Scottish Borders Council (the Council) for information about searches carried out in relation to his information requests. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Mr Mackay's requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the Council to comply with the requirement for review.

## Background

| Date          | Action  |
|---------------|---|
| 17 April 2014 | Mr Mackay made an information request to the Council.   |
|               | The Council did not respond to the information request.   |
| 23 May 2014   | Mr Mackay wrote to the Council, requiring a review in respect of its failure to respond.  |
|               | Mr Mackay did not receive a response to his requirement for review.   |
| 27 June 2014  | Mr Mackay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 4 July 2014   | The Council was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.   |
| 10 July 2014  | The Commissioner received submissions from the Council. These submissions are considered below.   |

## Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Mr Mackay's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA .
3. 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. Again, this is subject to qualifications which are not relevant in this case.

4. It is a matter of fact that the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The Council apologised to Mr Mackay for not responding earlier, and then responded to his requirement for review on 15 July 2014, so the Commissioner does not require it to take any further action in relation to Mr Mackay's application.

## **Decision**

The Commissioner finds that Scottish Borders Council (the 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 Mackay. In particular, the Council failed to respond to Mr Mackay's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Council has now responded to Mr Mackay's requirement for review, the Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Mackay's application.

## **Appeal**

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Should either Mr Mackay or Scottish Borders 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**25 July 2014**

**Scottish Information Commissioner**

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