

**Decision 143/2006 Mr Wilson and North
Lanarkshire Council**

*Request for names of Council Insurers from 1987 to the present –
failure to respond to information request within the statutory
timescale in the Freedom of Information (Scotland) Act 2002*

**Applicant: Martin Wilson
Authority: North Lanarkshire Council
Case No: 200502842
Decision Date: 7 August 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Fife
KY16 9DS



Decision 143/2006 Mr Wilson and North Lanarkshire Council

Request for names of Council Insurers from 1987 to the present – failure to respond to information request within the statutory timescale in the Freedom of Information (Scotland) Act 2002

Facts

Mr Wilson submitted a request to North Lanarkshire Council ('the Council') for the names of all Council Insurers from 1987 to the present, highlighting those responsible for Employee Liability Insurance, but did not receive a response to this.

He subsequently received the information he required upon resubmission of his request, and then requested the Council to review its actions in its handling of his request. Having received no response to this, he then appealed to the Scottish Information Commissioner for a Decision.

Outcome

The Commissioner found, on the balance of probabilities, that North Lanarkshire Council did not receive Mr Wilson's initial letter of 7 August 2005. He also found that it responded to his letter of 12 September within the statutory timescales for doing so, and therefore did not breach section 10(1)(a) of FOISA.

However, he found that the Council breached section 21(1) of FOISA in failing to respond to Mr Wilson's requirement for review within 20 working days of its receipt, and breached section 21(10) in failing to inform him of his right to appeal to the Court of Session on a point of law following a decision of the Commissioner.



Appeal

Should either Mr Wilson or North Lanarkshire Council wish to appeal against the Commissioner's 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 of receipt of this notice.

Background

1. On 7 August 2005 Mr Wilson submitted a request to North Lanarkshire Council ('the Council') for the names of all Council Insurers from 1987 to the present, highlighting those responsible for Employee Liability Insurance.
2. Having not received a response to this request, Mr Wilson contacted the Council again on 12 September, noting his dissatisfaction at the lack of response and repeating the request of his initial communication.
3. On 14 September 2005 the Council responded stating that it had no record of Mr Wilson's letter of 7 August being received, but that his request was now being progressed.
4. The Council then responded to Mr Wilson's request providing the information that he had requested.
5. On the advice of the Commissioner's Office, Mr Wilson then made a request to the Council on 8 November 2005 to review its actions in its handling of his information request.
6. Having received no reply from the Council, Mr Wilson appealed to the Commissioner on 16 January 2006 for a decision on the Council's handling of his request.



Investigation

7. Mr Wilson's appeal was allocated to an investigating officer. It was then validated by establishing that that he had first made a valid information request to a Scottish public authority (i.e. the Council) under FOISA and had appealed to the Commissioner only after asking the Council to review its failure to respond to the request.
8. The Commissioner invited comments from the Council, and asked it to provide information to the Commissioner regarding its procedures for handling and logging mail, any difficulties it had experienced at the point of Mr Wilson's request and details of any searches it undertook for his letter of 7 August 2005.
9. The Council replied by acknowledging that Mr Wilson's request for review had not been responded to within the statutory timescales, due to his correspondence being overlooked as a result of pressure of work. It stated that a response had since been sent out to him.
10. Regarding the Council's mail, it stated that all information requests are immediately forwarded to the Corporate Freedom of Information Officer as a matter of course, at which point they are logged. It stated that there had only been 2 instances since the Freedom of Information (Scotland) Act 2002 (FOISA) came into force where requests for information had not been timeously forwarded to the Corporate Freedom of Information Officer. It had had no other difficulties with the posting or logging system during this time.
11. The Council also stated that it had conducted a general search for Mr Wilson's correspondence of 7 August 2005, and had also made particular enquiries of the Departments of Education and Finance, these being the department to whom the letter had been addressed to, and the department responsible for the Council's insurance arrangements respectively. In both instances, it had not found it possible to locate Mr Wilson's original request.
12. The Council subsequently provided a copy of the incoming mail record for the Education Directorate (that Mr Wilson's letter of 7 August 2005 had been addressed to) covering the period of 8 to 23 August 2005.
13. Mr Wilson was also asked if he had sent his initial request by some form of recorded delivery, to which he replied that he had not.



The Commissioner's Analysis and Findings

14. Having looked over the incoming mail record provided by the Council, the Commissioner found that there is no record of the Council having received Mr Wilson's letter of 7 August 2005. He also notes that there is no record of Mr Wilson having sent this letter.
15. In terms of section 74 of FOISA, a letter is presumed to have been received three days after posting. This is a rebuttable presumption. The Commissioner has taken account of the comments made by both Mr Wilson and the Council, and finds, on balance of probabilities, that the request was not received by the Council.
16. The Commissioner notes that Mr Wilson stated in a letter to his Office, that he was of the opinion that the information he requested in his letter of 12 September 2005 was provided 12 days late. The Commissioner also notes that receipt of this letter was acknowledged by the Council on 14 September 2005, and that the subsequent response providing the information requested was dated 14 October 2005.
17. Section 10(1)(a) of FOISA states that Scottish public authorities must comply with a request for information not later than the twentieth working day after the receipt by the authority of the request.
18. In this respect, the first working day after the Council's receipt of Mr Wilson's letter of 12 September was 15 September, and the last working day on which it had to comply with the request was 15 October. The Commissioner is therefore satisfied that the Council responded to Mr Wilson's request within the statutory timescale set out in FOISA.
19. Section 21(1) of FOISA requires Scottish public authorities to comply with a requirement for review not later than the twentieth working day after receipt by it of the requirement.
20. The Commissioner notes the Council's admission in its submission to the Commissioner, of its failure to respond to Mr Wilson's request for review, and finds that the Council breached section 21(1) of FOISA. However, the Commissioner also notes that the Council subsequently wrote to Mr Wilson, reviewing its actions, and apologising to him for this failure.



21. The Commissioner also notes that whilst the Council's review response letter states Mr Wilson's right to appeal to the Commissioner for a decision regarding its handling of his request, it does not also state his right to appeal to the Court of Session on a point of law, as required by Section 21(10) of FOISA. The Commissioner therefore finds that the Council has also breached that section of FOISA.

Decision

The Commissioner finds, on the balance of probabilities, that North Lanarkshire Council did not receive Mr Wilson's initial letter of 7 August 2005. The Commissioner also finds that the Council responded to his letter of 12 September 2005 within the statutory timescales for doing so, and therefore did not breach section 10(1)(a) of FOISA.

However, the Commissioner finds that the Council breached section 21(1) of FOISA in failing to respond to Mr Wilson's requirement for review within 20 working days of its receipt, and breached section 21(10) in failing to inform him of his right to appeal to the Court of Session on a point of law following a decision of the Commissioner.

The Commissioner does not require the Council to take any further action in regard to this decision.

Margaret Keyse
Head of Investigations
7 August 2006