

# Decision Notice



Decision 013/2011 Mr Michael Traill and Lothian Buses Plc

Failure to respond to a request and failure to provide an adequate notice

Reference No: 201100027

Decision Date: 20 January 2011

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**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

This decision considers whether Lothian Buses Plc (Lothian Buses) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Michael Traill (Mr Traill).

## Background

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1. On 20 November 2010, Mr Traill wrote to Lothian Buses requesting the following information:  
*all the information released under FOISA during the month of September 2010.*
2. Lothian Buses did not provide a response to Mr Traill.
3. Mr Traill wrote to Lothian Buses on 23 December 2010 requesting a review of its failure to respond to his request for information, which he considered to be a refusal by Lothian Buses to provide information to him.
4. Lothian Buses notified Mr Traill of the outcome of its review on 29 December 2010. In its response, Lothian Buses apologised to Mr Traill for failing to respond to his request. Lothian Buses also explained that its lack of response, was not a refusal on its part to provide relevant information to Mr Traill, it was as a consequence of their being no relevant information held which would address his request.
5. Mr Traill wrote to the Commissioner's office on 31 December 2010 stating that he was dissatisfied with Lothian Buses' initial failure to provide any respond to his request for information. Mr Traill also expressed his dissatisfaction with Lothian Buses failure to send an appropriate notice in responding to his request for review. He highlighted that Lothian Buses' email of 29 December 2010 had failed to advise him of his right of appeal. Mr Traill indicated that he had no reason to believe that any information was being withheld, but he asked the Commissioner for a decision on the technical matters he had raised in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Traill 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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7. On 11 January 2011, Lothian Buses were notified in writing that an application had been received from Mr Traill and were invited to comment on the application as required by section 49(3)(a) of FOISA.
8. Lothian Buses responded on 19 January 2011 acknowledging that it had made an error in not responding to Mr Traill's request for information. Lothian Buses advised that it recognised that it should have informed Mr Traill formally and timeously that it did not hold any relevant information which would address his request.
9. Despite being asked to comment on its failure to provide an appropriate notice to Mr Traill in responding to his request for review, Lothian Buses did not provide any submission on this matter.
10. Lothian Buses did indicate that, having received the investigating officer's letter, it will ensure that any necessary steps are taken to restore the situation where requestors have no need to seek the Commissioner's assistance on any matter related to procedure.

## Commissioner's analysis and findings

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11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
12. Lothian Buses accepts that it did not provide a response to Mr Traill's request of 20 November 2010 within the required timescale
13. The Commissioner therefore finds that Lothian Buses failed to respond to Mr Traill's request for information of 20 November 2010 within the 20 working days allowed under section 10(1) of FOISA.
14. Section 21(10) of FOISA requires that where a Scottish public authority is responding to a requirement for review by providing a notice under section 21(5) or 21(9) of FOISA, this notice must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.
15. Having considered the response to the requirement for review sent by Lothian Buses on 29 December 2010, there is no information included in this response as to the right of application to the Commissioner and the right of appeal conferred by sections 47(1) and 56.



16. The Commissioner therefore finds that Lothian Buses failed to comply with section 21(10) of FOISA in responding to Mr Traill's requirement for review.
17. The Commissioner notes Mr Traill has since made an application to the Commissioner, no further purpose would be served by asking Lothian Buses to now rectify the breach of section 21(10) of FOISA in this case.
18. However, the Commissioner would recommend that the Council take steps to ensure that future responses to any requirements for review contain the information required by section 21(10).
19. The Commissioner acknowledges and welcomes Lothian Buses' intention to take necessary steps to restore the situation where requestors have no need to seek the Commissioner's assistance on any matter related to procedure.

## DECISION

The Commissioner finds that Lothian Buses failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Traill, in particular by failing to respond to Mr Traill's request for information within the statutory timescale laid down by section 10(1) of FOISA and failing to provide an adequate notice when responding to Mr Traill's requirement for review in line with section 21(10) of FOISA.

The Commissioner does not require Lothian Buses to take any action in relation to this application, however he would recommend that the Council should take steps to ensure that future responses to requirements for review contain the information required by section 21(10) of FOISA.

These breaches will be noted and may be taken into account in determining whether any future action should be taken in respect of Lothian Buses under the Commissioner's Enforcement Strategy.



## Appeal

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Should either Mr Traill or Lothian Buses 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.

**Claire Sigsworth**  
**Deputy Head of Enforcement**  
**20 January 2011**



## 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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- (6) This section is subject to sections 2, 9, 12 and 14.

##### 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
  - (b) in a case where section 1(3) applies, the receipt by it of the further information.

##### 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.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.



....

- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.