

# Decision Notice



Decision 102/2008 Mr Roger Pike and Dumfries and Galloway Council

Failure to respond to a request for information within the required timescales  
and failure to respond to a request for review

Reference No: 200801031

Decision Date: 28 August 2008

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**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

Dumfries and Galloway Council (the Council) did not respond to Mr Pike's information request or his subsequent request for review. The Council responded to Mr Pike during the investigation. Following this investigation, the Commissioner found that the Council had failed to comply with the timescales specified in sections 10(1) and 21(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

## Background

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1. On 13 April 2008, Mr Pike wrote to the Council requesting the name and address of a person who had supplied certain information to the Council.
2. Mr Pike did not receive a reply to his request, or a follow-up letter dated 12 May 2008. On 1 June 2008, he wrote to the Council requesting a review of its decision. Mr Pike drew the Council's attention to the fact that it had not responded to his initial request.
3. Mr Pike did not receive a response to his request for review and on 22 July 2008 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.
4. The application was validated by establishing that Mr Pike 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 failure to respond to that request. The case was then allocated to an investigating officer.

## Investigation

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5. On 24 July 2008, the Council was notified in writing that an application had been received from Mr Pike and was invited to comment on the application, all in terms of section 49(3)(a) of FOISA.
6. The Council responded on 11 August 2008, acknowledging that it had failed to respond to Mr Pike's initial request and request for review. The Council explained that both had been received by the Council but, due to the volume of correspondence being dealt with by the relevant department, they had not been processed in line with FOISA. The Council explained that it has now highlighted to its staff the need to examine correspondence in detail to ensure that information requests are identified.



7. The Council provided a copy of a letter to Mr Pike dated 7 August 2008, in which it apologised for failing to respond previously, and provided a full response to Mr Pike's information request.

## Commissioner's analysis and findings

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8. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant to this case.
9. The Commissioner finds that the Council failed to respond to Mr Pike's request for information within the 20 working days allowed by section 10(1) of FOISA.
10. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant here.
11. The Commissioner also finds that the Council failed to respond to Mr Pike's requirement for review within the 20 working days allowed under section 21(1) of FOISA.
12. In failing to comply with these timescales, the Council failed to comply with Part 1 of FOISA.
13. The Commissioner notes that the Council has now written to Mr Pike in response to his request and has apologised to Mr Pike.

## DECISION

The Commissioner finds that Dumfries and Galloway 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 Pike, in particular by failing to respond to Mr Pike's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Council has now responded to the initial request, the Commissioner does not require any further action in response to this particular application in relation to these failures.



## **Appeal**

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Should either Mr Pike or Dumfries and Galloway 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 notice.

**Claire Sigsworth**  
**Deputy Head of Investigations**  
**28 August 2008**



## 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.

##### 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

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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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