

# Decision Notice



Decision 102/2012 Mr Bob Costello and Dundee City Council

Failure to comply with required timescales to respond to a request and requirement for review

Reference No: 201201014  
Decision Date: 28 June 2012

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

This decision considers whether Dundee City 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 Costello.

## Background

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1. On 9 March 2012, Mr Costello wrote to the Council requesting certain specified information.
2. The Council acknowledged receipt of Mr Costello's request on 15 March 2012.
3. No response was received from the Council, and on 17 April 2012, Mr Costello wrote to the Council to request that it carry out a review of its failure to respond to his request.
4. Mr Costello did not receive a response to his requirement for review and on 29 May 2012 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.
5. The application was validated by establishing that Mr Costello 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 7 June 2012, the Council was notified in writing that an application had been received from Mr Costello and was invited to comment on the application.
7. The Council responded on 15 June 2012, apologising for its error in not responding to Mr Costello's information request. It explained that the current Legal Manager (the person responsible for handling requests within the Council) had taken up post on 1 April 2012, and Mr Costello's request appeared to have "fallen between two stools".
8. The Council enclosed a copy of a letter that it had sent to Mr Costello on the same date, in which it provided a response to his request of 9 March 2012.



## Commissioner's analysis and findings

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9. 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.
10. Since the Council did not provide a response to Mr Costello's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
11. 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.
12. Since the Council did not provide a response to Mr Costello's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. The Commissioner notes that the Council provided a response to Mr Costello on 15 June 2012. The Commissioner considers that this response (although apparently considered by the Council to be a response to Mr Costello's initial request) constituted the outcome of a review in accordance with section 21(4) of FOISA.
14. Section 21(4) of FOISA provides that, in responding to a requirement for review, the authority may;
  - (a) Confirm a decision complained of, with or without such modification 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.
15. Since Mr Costello had already submitted a requirement for review on 17 April 2012, asking that the Council review its failure to respond to his request, the Commissioner considers that the response of 15 June 2012 was a response in line with section 21(4)(c) of FOISA.
16. Given that the Council has now responded to Mr Costello's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Costello's application.



## **DECISION**

The Commissioner finds that Dundee City 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 Costello, in particular by failing to respond to Mr Costello'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 provided Mr Costello with a response to his requirement for review, the Commissioner does not require the Council to take any action in response to these failures.

## **Appeal**

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Should either Mr Costello or Dundee City 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 Enforcement**  
**28 June 2012**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 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.

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- (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.