

# Decision Notice



Decision 111/2010 Keith Knowles and Scottish Court Service

## **Failure to respond to an information request**

Reference No: 201000713  
Decision Date: 28 June 2010

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**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
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## Summary

This decision considers whether the Scottish Court Service complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Keith Knowles.

## Background

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1. On 8 October 2009 at 10:24 am, Mr Knowles emailed the Scottish Court Service (SCS) requesting a copy of the taped proceedings of a specified Fatal Accident Inquiry.
2. The SCS responded on 8 October 2009 at 10:40 am. The SCS requested that Mr Knowles telephone the SCS to discuss the request, which Mr Knowles did. Mr Knowles then emailed again at 12:50 on 8 October 2009, asking SCS to confirm in writing its refusal to provide that information.
3. In a subsequent response at 1.15 on 8 October 2009, the SCS stated that tapes used to record evidence are never copied, and they are also never allowed to leave the court building, other than with a Sheriff or a Judge's permission, and only then under secure data-handling controls. No refusal notice was issued to Mr Knowles, and it appears that his request was not considered in terms of FOISA.
4. On 27 November 2009 at 10:58 am, Mr Knowles emailed the SCS again. He referred to the telephone discussion and the subsequent email from the SCS on 8 October, and asked for confirmation that the situation was unchanged, and therefore that his request would not be complied with. The Commissioner has considered this email to constitute a requirement for review of the handling of Mr Knowles' request, and in particular of the SCS's failure to either provide the information requested or issue any notice confirming its decision that it was not obliged to do so.
5. The SCS replied to Mr Knowles by email on 27 November 2009 at 12:08 pm, stating that the transcription of any court evidence could only be authorised by the presiding Sheriff, who had declined this request.
6. Mr Knowles emailed the Commissioner on 12 April 2010, stating that he was dissatisfied with the way in which the SCS had dealt with his information request and applying for a decision in terms of section 47(1) of FOISA.



7. The application was validated by establishing that Mr Knowles 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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8. On 6 May 2010, the SCS was notified in writing that an application had been received from Mr Knowles and was invited to comment on the application as required by section 49(3)(a) of FOISA. The SCS was provided with a copy of Mr Knowles' application.
9. The SCS responded on 20 May 2010. It explained that at the time when Mr Knowles had previously requested the information sought in his email of 8 October 2009 by telephone, an official from the SCS had (in his capacity as an officer of the court, which is not itself a public authority for the purposes of FOISA) dealt with the request as everyday business. He had contacted the Sheriff in question, who had ruled that the information could not be provided, and this decision had been explained to Mr Knowles.
10. The SCS went on to explain that Mr Knowles' request of 8 October 2009 had not been considered as a request under FOISA. The SCS's position was that the court had already ruled on the request, which had been refused.
11. The SCS accepted that technically the correct procedure would have been to acknowledge the request of 8 October 2009 under FOISA and to explain that the information requested was being withheld. It indicated that its view was that the information requested was exempt from disclosure in terms of section 37 of FOISA, which applies to court records.
12. The SCS expressed its regret that Mr Knowles had been procedurally inconvenienced in this way, and said that it would remind its staff of the obligations under FOISA and update its guidance to address similar issues arising in future.
13. The SCS subsequently provided a response to Mr Knowles' information request on 11 June 2010. This response confirmed that the SCS was refusing to provide the information requested on the grounds that it was exempt from disclosure.

## Commissioner's analysis and findings

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### Section 1 of FOISA – right to information

14. The SCS's various communications in response to Mr Knowles's request, while appearing to confirm that relevant information was held and refusing to release it to him, failed to recognise that he had made a request for information falling within the terms of section 1(1) of FOISA.



15. The request met all the requirements set out in section 8(1) of FOISA, being in writing; stating the name of the applicant, providing an address for correspondence (his email address), and describing the information requested.
16. The failure to recognise and handle the request as one made in terms of FOISA, which the Commissioner has concluded is a breach of section 1(1) of FOISA, was acknowledged by the SCS in its letter to the Commissioner's office on 6 May 2010.

### **Mr Knowles' requirement for review**

17. Section 21 of FOISA is set out in full in the Appendix. Section 21(1) gives a Scottish public authority 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.
18. Section 21(4) sets out what an authority might do when it conducts a review. The authority can (i) confirm its original decision, with or without modification; (ii) substitute a different decision from that originally made, or (iii) reach a decision where the applicant's complaint is that none has been made.
19. Section 21(5) then requires the authority to notify the applicant of what it has done under section 21(4), and a statement of its reasons for so doing, within the time allowed by section 21(1). This notice must also detail the applicant's right to apply to the Commissioner under section 47(1) of FOISA, and to appeal to the Court of Session under section 56 (section 21(10)).
20. As with his initial request, the Commissioner is satisfied that Mr Knowles made a valid request for review to the SCS. His email to the SCS on 27 November 2009 at 10:58 am provided his name, his email address for reply, and referred to previous correspondence in respect of his information request. He sought confirmation that the SCS's position had not changed, and so that his request for information would not be complied with. His communication met all of the requirements set out in section 20 of FOISA for a valid requirement for review.
21. At this point, the SCS could have addressed its earlier failure in respect of Mr Knowles' request and carried out a review which met the requirements of section 21 of FOISA. The Commissioner has noted from the SCS's email response on 27 November 2009 at 12:08 pm, however, that it failed to do so, and in consequence failed to deal with Mr Knowles' request for review in compliance with section 21 of FOISA.
22. The Commissioner has noted that during the investigation, the SCS conducted a review of its handling of Mr Knowles' information request and provided notice of the outcome of this review to Mr Knowles' in compliance with section 21(5) of FOISA.



23. In these circumstances, while noting with concern the failures identified in this case, the Commissioner does not require any action to be taken in response to these particular breaches in response to Mr Knowles's application. However, the breaches will be noted and may be taken into account in determining whether any future action should be taken in respect of the SCS under the Commissioner's Enforcement Strategy.

## **DECISION**

The Commissioner finds that the Scottish Court Service (SCS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Knowles, in particular by failing to respond to Mr Knowles' request for information and requirement for review as required by sections 1(1) and 21 of FOISA respectively.

Given the steps taken by the SCS since Mr Knowles' application to him, the Commissioner does not require the SCS to take any action in response to these failures in response to this particular application.

## **Appeal**

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Should either Mr Knowles or the Scottish Court Service 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 2010**



## 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.

##### 8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
  - (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) states the name of the applicant and an address for correspondence; and
  - (c) describes the information requested.

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##### 20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- (2) A requirement under subsection (1) is referred to in this Act as a "requirement for review".
- (3) A requirement for review must-
  - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);



- (b) state the name of the applicant and an address for correspondence; and
- (c) specify-
  - (i) the request for information to which the requirement for review relates; and
  - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).
- (4) For the purposes of paragraph (a) of subsection (3) (and without prejudice to the generality of that paragraph), a requirement for review is treated as made in writing where the text of the requirement is as mentioned in paragraphs (a) to (c) of section 8(2).
- (5) Subject to subsection (6), a requirement for review must be made by not later than the fortieth working day after-
  - (a) the expiry of the time allowed by or by virtue of section 10 for complying with the request; or
  - (b) in a case where the authority purports under this Act-
    - (i) to comply with a request for information; or
    - (ii) to give the applicant a fees notice, a refusal notice or a notice under section 17(1) that information is not held,but does so outwith that time, the receipt by the applicant of the information provided or, as the case may be, the notice.
- (6) A Scottish public authority may comply with a requirement for review made after the expiry of the time allowed by subsection (5) for making such a requirement if it considers it appropriate to do so.

...

## **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.
- (2) If-
  - (a) the authority is the Keeper of the Records of Scotland; and



- (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,  
  
subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- ....
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
  - (a) the requirement is vexatious; or
  - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (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.