

# Decision Notice

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## Decision 165/2014 Mr Archie Burns and City of Edinburgh Council

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**Ballot papers for Portobello Community Council Election 2013:**

**Failure to respond within statutory timescales**

Reference No: 201401390

Decision Date: 24 July 2014



Scottish Information  
Commissioner



## Summary

On 26 November 2013, Mr Burns asked City of Edinburgh Council (the Council) for the ballot papers for the Portobello Community Council election in 2013. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

## Background

Date	Action
26 November 2013	Mr Burns made an information request to the Council.
23 December 2013	The Council responded to the information request.
23 December 2013	Mr Burns wrote to the Council requiring a review of its decision.
24 December 2013	Although Mr Burns received an acknowledgement to his email of 23 December 2013, he did not receive a response to his requirement for review. Instead Mr Burns was advised to request another review.
24 April 2014	Mr Burns wrote to the Council again requiring a response to his request for review.
24 April 2014	Mr Burns wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
30 June 2014	The Council was notified in writing that an application had been received from Mr Burns and was invited to comment on the application.
11 July 2014	The Commissioner received submissions from The Council. These submissions are considered below.

## Commissioner's analysis and findings

1. The Council acknowledged that it had not complied with the relevant timescale in FOISA, and confirmed that a response to Mr Burns' requirement for review was emailed to him on 23 May 2014. A copy of the response was provided to the Commissioner. Mr Burns has also confirmed receipt of it.
2. The Council apologised to Mr Burns for any misunderstandings concerning his communications.
3. 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. This is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the Council did not provide a response to Mr Burns' requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. Given that the Council responded to Mr Burns' requirement for review on 23 May 2014, the Commissioner does not require it to take any further action in relation to Mr Burns' application.

## **Decision**

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Burns. In particular, The Council failed to respond to Mr Burns' requirement for review within the timescales laid down by section 21(1) of FOISA.

Given that a response has now been provided to Mr Burns' requirement for review, the Commissioner does not require the Council to take any action in respect of this failure.

## **Appeal**

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Should either Mr Burns or City of Edinburgh Council wish to appeal against this decision, they have the right to 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.

**Alison Davies**  
**Deputy Head of Enforcement**  
**24 July 2014**

**Scottish Information Commissioner**

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