



Scottish Information
Commissioner

**Decision 172/2007 Mr David R Gardner and Shetland Islands
Council**

***Failure to respond to a request for information and a
subsequent request for review***

**Applicant: Mr David R Gardner
Authority: Shetland Islands Council
Case No: 200701092
Decision Date: 24 September 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 172/2007 Mr David R Gardner and Shetland Islands Council

Information request made to Shetland Islands Council – Council failed to respond to the request and a subsequent request for a review – the Commissioner found that Shetland Islands Council breached the timescales contained in sections 10 and 21 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Facts

1. On 21 May 2007, Mr Gardner made an information request by email to Shetland Islands Council (the Council).
2. Mr Gardner did not receive a response to this request and on 18 June 2007 sent a follow-up email to the Council enquiring as to the status of his request and asking the Council to comply with his request under the terms of FOISA.
3. The Council also failed to respond to Mr Gardner's second email and on 6 July 2007, Mr Gardner once again emailed the Council, this time asking for a review as he had not received a response to his request within the prescribed 20 working days of his initial request.
4. On 6 July 2007, the Council acknowledged Mr Gardner's request for review and confirmed that his request would be looked at again and that someone would get back to him in due course.
5. On 7 August 2007, having received no further response, Mr Gardner submitted an application to the Commissioner for a decision in this matter.
6. The case was validated by establishing that Mr Gardner had made a valid information request to a Scottish public authority and had appealed to the Commissioner only after asking the authority to review its failure to respond to his request.
7. The case was then allocated to an investigating officer.
8. On 20 August 2007, the investigating officer notified the Council, in terms of section 49(3) of FOISA, of the application made by Mr Gardner, asking for its comments on the application.



9. The Council responded on 10 September 2007. The Council accepted that its procedures for dealing with requests for information were not followed correctly on this occasion, both in terms of the initial request and in terms of the request for a review. The Council also confirmed that appropriate steps have been taken to ensure that staff are clear on the procedures that the Council has in place to ensure compliance with the legislation.
10. On 21 September 2007, the Council wrote to Mr Gardner in response to his request for information. In its response, the Council confirmed that both Mr Gardner's initial request for information and subsequent request for review had not been carried out in line with the Council's procedures for dealing with requests for information under FOISA legislation.

Decision

The Commissioner finds that Shetland Islands Council (the Council) failed to respond to Mr Gardner's request for information within the 20 working days allowed by section 10(1) of FOISA.

The Commissioner also finds that the Council failed to respond to Mr Gardner's request for review within 20 working days allowed by section 21(1) of FOISA.

In failing to comply with these timescales the Council failed to comply with Part 1 of FOISA.

The Commissioner notes that the Council has taken steps to ensure that the errors made in this case are not repeated and that it has now written to Mr Gardner in response to his request for information. The Commissioner therefore does not require the Council to take any further steps in this matter.



Appeal

Should either Mr Gardner or the Council wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. An appeal must be made within 42 days after the date of intimation of this notice.

Claire Sigsworth
Deputy Head of Investigations
24 September 2007