

# Decision Notice

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**Decision 194/2017: Mr Brian Gourlay and West Dunbartonshire Council**

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**Public Interest Disclosures: failure to respond within statutory timescales**

Reference No: 201701673

Decision Date: 22 November 2017



Scottish Information  
Commissioner

## Summary

West Dunbartonshire Council (the Council) was asked for various information about the evaluation of Public Interest Disclosures (PIDs) and who was responsible for Corporate Governance within the Council. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to comply with Mr Gourlay's requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the Council to comply with the requirement for review.

## Background

| Date              | Action   |
|-------------------|--|
| 15 June 2017      | Mr Gourlay made an information request to the Council.   |
|                   | The Council did not respond to the information request.  |
| 28 July 2017      | Mr Gourlay wrote to the Council, requiring a review of its failure to respond.   |
|                   | Mr Gourlay did not receive a response to his requirement for review.   |
| 22 September 2017 | Mr Gourlay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17. |
| 25 October 2017   | The Council was notified in writing that an application had been received from Mr Gourlay and was invited to comment on the application.   |
|                   | The Council did not provide the Commissioner with any submissions.   |

## Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Mr Gourlay's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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. Again, 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 Gourlay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.

## Decision

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The Commissioner finds that West Dunbartonshire 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 Gourlay. In particular, the Council failed to respond to Mr Gourlay's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Mr Gourlay's requirement for review, by **Monday 18 January 2018**.

## Appeal

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Should either Mr Gourlay or West Dunbartonshire 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.

## Enforcement

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If West Dunbartonshire Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**22 November 2017**

**Scottish Information Commissioner**

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