

# Decision Notice



Decision 204/2011 Miss Alice Derwent and East Dunbartonshire Council

Failure to comply with required timescales or carry out review

Reference No: 201101571

Decision Date: 10 October 2011

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether East Dunbartonshire Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Miss Derwent.

## Background

---

1. On 20 February 2011, Miss Derwent wrote to the Council requesting information relative to the Council's Passport to Leisure policy on disabled persons accessing leisure facilities. The Council acknowledged Miss Derwent's request that date.
2. On 2 May 2011, having received no response to her request, Miss Derwent wrote to the Council requesting a review of its failure to reach a decision on the request. The request for review was also acknowledged by the Council.
3. Miss Derwent did not receive a response to her requirement for review and, on 26 August 2011, wrote to the Commissioner, stating that she was dissatisfied with the Council's failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Miss Derwent 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 failure to respond to that request. The case was then allocated to an investigating officer.

## Investigation

---

5. On 15 September 2011, the Council was notified in writing that an application had been received from Miss Derwent and was invited to comment on the application.



6. The Council responded on 30 September 2011, acknowledging that it had failed in its duty under Part 1 of FOISA in that it did not provide Miss Derwent with a response to her request within the appropriate timeframe nor was a review carried out. The Council explained that this failure was a result of the volume of requests being received. However, it further explained that as a result the Council is currently undergoing a major reconfiguration of the way in which it processes requests across the authority in order to improve its service.
7. Although the Council advised the investigating officer that a response to the review would be provided to Miss Derwent during the week commencing 3 October 2011, no response to the review had been provided by the date of this decision.

### **Commissioner's analysis and findings**

---

8. 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.
9. Given that the Council did not respond to Miss Derwent's request of 20 February 2011, the Commissioner finds that the Council failed to respond to Miss Derwent's request for information within the 20 working days allowed by section 10(1) of FOISA.
10. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
11. While noting the Council's comments in this case, the Commissioner finds that it failed to deal with Miss Derwent's requirement for review within the 20 working days required by section 21(1) of FOISA.
12. The Commissioner now requires the Council to deal with Miss Derwent's requirement for review, in accordance with the requirements of section 21 of FOISA.



## DECISION

The Commissioner finds that East Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Miss Derwent's request for information within the timescales laid down by section 10(1) of FOISA and by failing to comply with Miss Derwent's requirement for review as required by section 21 of FOISA.

The Commissioner therefore requires the Council to deal with Miss Derwent's requirement for review, in accordance with the requirements of section 21 of FOISA, by 24 November 2011.

## Appeal

---

Should either Miss Derwent or the 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.

**Margaret Keyse**  
**Head of Enforcement**  
**10 October 2011**



## Appendix

---

### 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.

...

- (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.

...