



Scottish Information
Commissioner

**Decision 064/2005 Mr Robert Stephen and Aberdeenshire
Council**

**Applicant: Mr Robert Stephen
Authority: Aberdeenshire Council
Case No: 200502857
Decision Date: 1 December 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 064/2005 Mr Robert Stephen and Aberdeenshire Council

Failure to respond to a request for information (section 10) or to a request for review (section 21) within the prescribed timescales – content of certain notices (section 19)

Facts

1. Mr Stephen wrote to Aberdeenshire Council (the Council) on 28 June 2005 requesting information about usage of certain North Aberdeenshire harbours. He did not receive a response to this or to his subsequent request for the same information dated 3 September 2005. Mr Stephen subsequently applied to the Commissioner for a decision in terms of section 47 of the Freedom of Information (Scotland) Act (FOISA) by letter dated 12 October 2005.
2. Given the absence of any response to Mr Stephen's initial request (and therefore, by definition, the absence of any information about Mr Stephen's rights to a review), the Commissioner accepted Mr Stephen's letter of 3 September 2005 as a request for review.
3. The Council has advised that it carried out an extensive search of its Economic Development office and that Mr Stephen's letter of 28 June 2005 would appear to have gone missing: it would not have been deliberately ignored. The Council has, however, acknowledged that the letter of 3 September 2005 was not responded to in accordance with FOISA and recognised that it has a training requirement as a consequence. Certain information (in respect of three Council-owned harbours) was provided to Mr Stephen on 17 October 2005, albeit not in accordance with FOISA. The Council maintains that it does not hold the information requested in respect of the remaining harbours, which are understood to be in the hands of private trusts. The Council has agreed to look again at whether it holds the information.



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4. The Council did not respond to Mr Stephen's request for information of 28 June 2005, or to his request for review of 3 September 2005. Given that correspondence for the intended recipient of Mr Stephen's letter was being reallocated amongst other officers in that officer's absence and that the letter of 3 September 2005 was received but not logged in the Council's Freedom of Information database, the Commissioner has decided, taking account of the presumption of receipt contained in section 74(2) of FOISA (which the Council has not been in a position to rebut), that the letter of 28 June 2005 was in fact received by the Council.
5. The Commissioner finds that Aberdeenshire Council failed to deal with Mr Stephen's requests in accordance with the requirements of Part 1 of FOISA, in particular the timescales set down in sections 10(1) and 21(1).
6. The Commissioner is, however, satisfied that Mr Stephen has now been provided with certain information in response to his request and advised that the remaining information requested is not held by the Council.
7. In view of the fact that the Council responded to Mr Stephen's request on 17 October 2005 and has now entered into further correspondence about this matter with Mr Stephen, the Commissioner does not require that any action be taken by the Council at present.

Appeal

Should either Mr Stephen or Aberdeenshire 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 of receipt of this notice

Margaret Keyse
Head of Investigations
1 December 2005