

# Decision Notice



Decision 095/2010 Rosa MacPherson and Clackmannanshire Council

Information relating to Single Status Review

Reference No: 201000636  
Decision Date: 15 June 2010

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**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
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## Summary

Rosa MacPherson requested from Clackmannanshire Council (the Council) information regarding the Council's Single Status Review. The Council did not respond to the request. Following a review, during which the Council provided her with some of the information requested, Ms MacPherson remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council located further information falling within the scope of Ms MacPherson's request, and provided this to her.

Following an investigation, the Commissioner found that the Council had failed to deal with Ms MacPherson's request for information in accordance with Part 1 of FOISA, by failing to adhere to the statutory timescales for compliance in section 10(1) and 21(1) of FOISA. The Commissioner also found that the Council had failed to identify and supply all information falling within the scope of Ms MacPherson's information request, and in so doing failed to comply with section 1(1) of FOISA. As the remaining information was provided to Ms MacPherson during the investigation, he did not require the Council to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General Entitlement); 10(1)(a) (Time for Compliance); 21(1), (4), (5) and (10) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 8 December 2009, Ms MacPherson wrote to the Council requesting all documentation and evidence including, but not limited to, reports, notes, correspondence, minutes and emails received, sent or in relation to the evaluation and re-evaluation of her post under the Single Status Review held by the Council. Ms MacPherson specified that this should include the original terms of reference for the review and any specific instructions, guidance or considerations that were presented to the Single Status team in order to carry out the review, and details of what assessment criteria and procedures were applied



2. Ms MacPherson also requested the author and title of each of the documents presented where this is not apparent from the documents themselves.
3. The Council failed to respond within 20 working days and, on 19 January 2010, Ms MacPherson sent an email reminding the Council of its responsibilities under FOISA, giving it until 22 January to provide a response to her request prior to seeking a review.
4. On 29 January 2010, having received no response to her request or subsequent reminder, Ms MacPherson wrote to the Council requesting a review of its decision.
5. The Council responded to Ms MacPherson by email on 15 March 2010, attaching a number of documents relating to her request. The email did not contain any references to Ms MacPherson's right to apply to the Commissioner for a decision or subsequently to the Court of Session.
6. On 23 March 2010, Ms MacPherson wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. She expressed dissatisfaction with what she considered to be only a partial response, and the delays in responding to her request.
7. The application was validated by establishing that Ms MacPherson 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 response to that request. The case was then allocated to an investigating officer.

## Investigation

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8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to provide the investigating officer with information withheld from Ms MacPherson and to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The Council was additionally asked to comment on its handling of Ms MacPherson's request and in particular its apparent failure to
  - a. adhere to the timescales contained in sections 10 and 21 of FOISA;
  - b. provide Ms MacPherson with a notice in accordance with section 21(5) and (10) of FOISA when responding to Ms MacPherson's request for review; and
  - c. identify and provide all of the information that it held within the scope of Ms MacPherson's request.



10. During the investigation, the Council and Ms MacPherson entered into further correspondence with regard to her information request. This led to the Council identifying and supplying to Ms MacPherson a number of additional documents that fell within the scope of her request.
11. The Council responded to the investigating officer's request for comments on 7 May 2010. This provided a copy of all of the information it held within the scope of Ms MacPherson's request, including copies of seven documents specifically related to the evaluation of her post that had not previously been provided to Ms MacPherson, and answers to specific questions asked by the investigator. The Council indicated that it did not consider any of the information provided to be exempt and had sent a copy of its response to the Commissioner, including all of the information, to Ms MacPherson.
12. Ms MacPherson was contacted to confirm whether, in the light of being provided with all of the information held by the Council within the scope of her request, she still required the Commissioner to issue a decision. Ms MacPherson confirmed that she felt that the additional disclosures meant that her request had been satisfied, but remained dissatisfied with the manner in which her request had been handled by the Council. She therefore wished the Commissioner to issue a decision in relation to the technical and administrative aspects of the Council's handling of her request and subsequent request for review.

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

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13. In coming to a decision on this matter, the Commissioner has considered all of the information and the submissions made to him by both Ms MacPherson and the Council and is satisfied that no matter of relevance has been overlooked.

#### **Timescales**

14. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
15. Ms MacPherson emailed her request to the Council on 11 December 2010 and received automatic electronic confirmation that the message had been received that day. She sent a further message to the Council that day asking that she receive confirmation of receipt and also that the 20 working day period for compliance ended on 14 January 2010. The Council acknowledged receipt of the request in an email dated 16 December 2009.
16. Ms MacPherson contacted the Council on 19 January 2010, indicating that she had not received a response to her request and if she did not receive a reply by 22 January 2010 she would submit a request for review. Ms MacPherson did not receive any response to this message.



17. The Commissioner therefore finds that the Council failed to respond to Ms MacPherson's request for information of 11 December 2009 within the 20 working days allowed by section 10(1) of FOISA.
18. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exemptions which are not relevant in this case.
19. Where an applicant has made an information request and received no response, and then made a valid request for review, prompting the authority to issue a response, the response given at that stage has the effect of specifying the outcome of a review. This is because section 21(4) of FOISA sets out what an authority might do when it conducts a review:
  - a. confirm a decision with or without modification,
  - b. substitute a decision, or
  - c. reach a decision if none had been made before.
20. On 29 January 2010, Ms MacPherson submitted a request for review to the Council. She received an email from the Council on 1 February 2010 acknowledging receipt of her request for review.
21. Ms MacPherson received an email from the Council on 15 March 2010, accompanied by a number of attachments containing some of the information requested.
22. In this case, the Council's email of 15 March 2010, by providing a response to Ms MacPherson's request, satisfied its obligation to conduct a review in terms of section 21(4)(c). However as the email and the attached information was not provided within the required 20 working days, the Commissioner finds that the Council failed to comply with the requirements of section 21(1) of FOISA.
23. Section 21(10) of FOISA requires the notice issued by the public authority informing a person of the outcome of its review to contain particulars about their right to apply for a decision by the Scottish Information Commissioner, and subsequent right to make an appeal to the Court of Session.
24. The Council's message was brief and did not include any information regarding Ms MacPherson's right to apply for a decision by the Commissioner or her subsequent right to make an appeal to the Court of Session. The Commissioner therefore finds the Council failed to comply with the requirements of section 21(10) of FOISA.



25. In its submissions to the Commissioner, the Council indicated that during December 2009 and January 2010 it received a large number of requests from staff in relation to the Single Status Review. The Council further submitted that it had limited resources, a single person, to respond to these requests and despite best efforts failed to meet the timescales in relation to Ms MacPherson's request. The Council also suggested that its failure to include in its response to Ms MacPherson dated 15 March 2010, information in accordance with the requirements of section 20(10) of FOISA was an error for which it apologised.

### Information provided

26. Section 1(1) of FOISA creates a general entitlement of access to information held by a Scottish public authority (subject to the application of any exemptions in Part 2 of FOISA, and any other provisions within Part 1 which mean that the right of access does not apply in that case).
27. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless it is considered to be exempt from disclosure.
28. The Commissioner notes that the Council's response of 15 March 2010 provided Ms MacPherson with some information and indicated that "there is nothing else by way of documentation or correspondence which relates to your FOI request". However, a number of additional items were identified and provided to Ms MacPherson only after she had made her application to the Commissioner.
29. In additional correspondence with Ms MacPherson, the Council supplied a further five documents falling within the scope of the request to Ms MacPherson on 15 and 16 April 2010. Further information falling within the scope of the request was later identified, and also supplied to Ms MacPherson, within the Council's responses to the investigating officer's questions.
30. The Council informed the Commissioner that it did not consider any of the information requested by Ms MacPherson to be exempt information, and it did not claim that any other provision in FOISA removed the obligation to comply with section 1(1) in this case. Therefore, the Commissioner concludes that by failing to identify and provide the information provided to Ms MacPherson during the investigation, when first responding to her request and subsequent request for review, the Council failed to comply with section 1(1) of FOISA.
31. The Council explained that information relating to the Single Status Review was stored in a number of locations falling into three categories:
- a. A software programme known as Gauge Evaluator;
  - b. The Council's IT network in documents, spreadsheets and emails; and
  - c. Paper files.



32. The Council provided the Commissioner with details of the search terms used to locate information within the scope of Ms MacPherson's request including the job title, employee name, manager's name, Head of Service name and job reference number. While the Council did not explain in detail how these search terms had been applied, the Commissioner can only conclude that the initial searches conducted by the Council were inadequate since they failed to locate all of the information it held within the scope of Ms MacPherson's request.
33. However, the Commissioner is satisfied that the Council took additional steps during the investigation which rectified this failure, and has now satisfied Ms MacPherson's information request.

## DECISION

The Commissioner finds that Clackmannanshire Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Ms MacPherson, in particular by:

- i) failing to respond to her request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA;
- ii) failing to provide her with information regarding her right to apply to the Commissioner for a decision and subsequently her right to apply to the Court of Session in accordance with section 21(10) of FOISA;
- iii) failing to identify and provide Ms MacPherson with the information which fell within the scope of her request and which was identified and provided to Ms MacPherson after its review of this request, thereby failing to comply with the requirements of section 1(1) of FOISA

Given that the Council supplied all of the information it held within the scope of her request to Ms MacPherson during the course of the investigation, the Commissioner does not require the Council to take any action in response to these failures.



## Appeal

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Should either Ms MacPherson 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**15 June 2010**





## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

##### 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;

...

##### 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.

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.