

# Decision Notice



Decision 022/2012 Mr Brian Adams and Aberdeenshire Council

Failure to comply with required timescales or carry out review

Reference No: 201102388

Decision Date: 03 February 2012

[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 Aberdeenshire 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 Mr Adams.

## Background

---

1. On 17 September 2011, Mr Adams wrote to the Council requesting information in relation to a specific matter which had been the subject of ongoing correspondence with the Council.
2. On 31 October 2011, having received no response to his request, Mr Adams wrote to the Council requesting a review of its failure to reach a decision on the request.
3. Mr Adams did not receive a response to his requirement for review and, on 21 December 2011, wrote to the Commissioner, stating that he 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 Mr Adams 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 13 January 2012, the Council was notified in writing that an application had been received from Mr Adams and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
6. The Council responded on 24 January 2012, explaining that it had considered Mr Adams' request a continuation of an earlier request which had been reviewed and responded to on 12 September 2011. It explained that the Council had referred to the request within a letter dated 3 October 2011 and it was considered nothing more could be added.



7. However, the Council also provided Mr Adams with a response to his requirement for review on 24 January 2012, explaining that it had believed the initial request to have been responded to within the letter of 3 October 2011.
8. Mr Adams confirmed he had received the response to the review on 24 January 2011.

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

---

9. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
10. The Commissioner notes that whilst the Council referred to Mr Adams' request for information within a letter it had sent to him on 3 October 2011, the Commissioner is not satisfied that the content of that letter, as it relates to the request of 17 September 2011, can be deemed to be a response to the request in any of the ways permitted by Part 1 of FOISA.
11. Given that the Council did not respond to Mr Adams' request of 17 September 2011 in accordance with Part 1 of FOISA, the Commissioner finds that the Council failed to respond to Mr Adams' request for information within the 20 working days allowed by section 10(1) of FOISA.
12. 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)).
13. As the Council did not provide Mr Adams with a response to his requirement for review of 31 October 2011, the Commissioner finds that it failed to deal with Mr Adams' requirement for review within the 20 working days required by section 21(1) of FOISA.
14. Given that the Council has now provided Mr Adams with a response to his requirement for review, the Commissioner does not require the Council to take any action in this case.



## DECISION

The Commissioner finds that Aberdeenshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), by failing to respond to Mr Adams' request for information within the timescale laid down by section 10(1) of FOISA and by failing to comply with Mr Adams' requirement for review as required by section 21 of FOISA. He does not require the Council to take any action in respect of these failures in response to Mr Adams' application.

## Appeal

---

Should either Mr Adams 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 after the date of intimation of this decision.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**03 February 2012**



## 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.

...