

# Decision Notice



Decision 012/2013 Dr Alan Melville and Stirling Council

Compliance with required timescales

Reference No: 201202652

Decision Date: 4 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews KY16 9DS

Tel: 01334 464610



## Summary

This decision considers whether Stirling Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Dr Melville.

## Background

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1. On 19 July 2012, Dr Melville emailed the Council requesting certain specified information.
2. The Council responded on 7 August 2012, explaining why, in its view, the information was exempt from disclosure under FOISA.
3. Dr Melville requested additional explanation of the response on 7 August 2012. The Council provided this on 9 August 2012.
4. On 9 August 2012, Dr Melville emailed the Council requesting a review of its decision to withhold the requested information.
5. Dr Melville did not receive a response to his requirement for review and on 13 December 2012 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Dr Melville 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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7. On 8 January 2013, the Council was notified in writing that an application had been received from Dr Melville and was invited to comment on the application.
8. The Council responded on 23 January 2013 with its submissions on why it had not responded to Dr Melville's request for review.



9. On 30 January 2013, the Council issued a response to Dr Melville's request for review.

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

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10. 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, subject to certain exceptions which are not relevant in this case.
11. In its submissions, the Council apologised that it had taken a long time to issue a review response. It explained that it was currently dealing with an increased number of requests for review, and it had not been possible to complete this request for review on time. In addition, this particular request had to be transferred between solicitors to cope with secondment and other work commitments.
12. Since the Council did not provide a response to Dr Melville's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
13. Given that the Council has now responded to Dr Melville's requirement for review, the Commissioner does not require it to take any further action in this case.
14. The Commissioner would remind Scottish public authorities that they have a statutory duty to comply with the timescales in FOISA for responding to requests and requests for review, and that they must ensure that the internal procedures and arrangements by which they achieve this are sufficiently robust. The Council may wish to review its arrangements for carrying out reviews, in light of this case.

## **DECISION**

The Commissioner finds that Stirling Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Dr Melville, by failing to respond to Dr Melville's requirement for review within the timescale laid down in section 21(1) of FOISA.

Given that a review response has now been provided to Dr Melville, the Commissioner does not require the Council to take any action in respect of this failure.



## **Appeal**

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Should either Dr Melville or Stirling 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.

**Alison Davies**  
**Acting Deputy Head of Enforcement**  
**4 February 2013**



## 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.

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##### 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.

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