

# Decision Notice

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**Decision 077/2018: Mr Brian Gourlay and West Dunbartonshire Council**

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**Use of a specified email address: failure to respond within statutory timescales**

Reference No: 201800534

Decision Date: 4 June 2018



Scottish Information  
Commissioner

## Summary

On 7 November 2017, Mr Gourlay asked West Dunbartonshire Council (the Council) to confirm that a specified Council Officer was instructed to use a specified email address. He also asked how many times the email address had been used for Freedom of Information responses.

This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Council failed to provide Mr Gourlay with appropriate information about his rights of appeal.

The Commissioner has ordered the Council to issue a revised response to Mr Gourlay's request for review.

## Background

| Date             | Action  |
|------------------|---|
| 7 November 2017  | Mr Gourlay made an information request to the Council.  |
|                  | The Council did not respond to the information request.   |
| 27 December 2017 | Mr Gourlay wrote to the Council requiring a review of its failure to respond.   |
| 29 December 2017 | Mr Gourlay received an acknowledgement of his information request, but he did not receive a response to his requirement for review.   |
| 24 January 2018  | Mr Gourlay received a response to his request, inviting him to submit a second requirement for review.  |
| 21 February 2018 | Mr Gourlay submitted a second requirement for review. The Commissioner has determined that it was invalid, as Mr Gourlay did not state his reasons for dissatisfaction.   |
| 21 March 2018    | The Council responded to the (invalid) requirement for review of 21 February 2018.  |
| 21 March 2018    | Mr Gourlay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's review response and failure to respond to his request in time. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 3 and 7 May 2018 | The Council was notified in writing that an application had been received from Mr Gourlay and was invited to comment on the application.  |
| 29 May 2018      | The Commissioner received submissions from the Council. These submissions are considered below.   |

## Commissioner's analysis and findings

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1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Council did not provide a response to Mr Gourlay's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. The Commissioner notes Mr Gourlay made a request for review on 27 December 2017. It follows that the Council's response should have been in terms of section 21(4)(c) of FOISA (i.e. the Council was obliged to reach a decision, where the complaint is that no decision had been reached). However, the response provided to Mr Gourlay on 24 January 2018 was not made in terms of section 21(4)(c), and invited Mr Gourlay to seek a review if dissatisfied. Mr Gourlay should have been advised of his right to apply to the Commissioner, rather than invited to submit a second requirement for review (section 21(10) of FOISA).
4. The Commissioner finds that the Council failed to respond to Mr Gourlay's request for review in terms of section 21(4)(c) and failed to provide Mr Gourlay with particulars about his right of application to the Commissioner and of his appeal rights in terms of sections 47(1) and 56 of FOISA, as required by section 21(10).
5. Following the Council's response of 24 January 2018, Mr Gourlay asked for another review on 21 February 2018. The Council carried out a review on 21 March 2018, finding that the request was vexatious. However, the Commissioner has found that Mr Gourlay's request for review of 21 February 2018 was not valid, in terms of section 20(3)(c) of FOISA, in that it did not specify his reasons for dissatisfaction, thus making the review outcome invalid too.
6. The Council accepts that the procedure it followed was incorrect and has issued instructions to avoid any repeat.
7. As noted above, the Council has significantly altered its views on Mr Gourlay's information request. Initially, it found that the information he asked for should be withheld, but now considers that the request is vexatious. Given that the Council's current view of the request differs markedly from the position upon which its initial response was based, the Commissioner requires the Council to issue another review response to Mr Gourlay (in relation to his valid request for review of 27 December 2017) which reflects its revised position, with appropriate advice and assistance. Mr Gourlay can then apply to the Commissioner for a decision, if dissatisfied with the decision from the Council.

## Decision

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The Commissioner finds that West Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Gourlay.

The Council failed to respond to Mr Gourlay's request within 20 working days. In doing so, it failed to comply with section 10(1) of FOISA.

The Council also failed to respond to Mr Gourlay's request for review in terms of section 21(4)(c) and failed to provide particulars about his right of application to the Commissioner and of his appeal rights in terms of sections 47(1) and 56 of FOISA, as required by section 21(10).

The Commissioner requires the Council to issue a revised review outcome, in terms of section 21(4)(c) of FOISA by **Thursday 19 July 2018**.

## Appeal

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Should either Mr Gourlay or West Dunbartonshire Council wish to appeal against this decision, they have the right to 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.

## Enforcement

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If West Dunbartonshire Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**4 June 2018**

**Scottish Information Commissioner**

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