

<b>Decision 137/2006 – Mr Jim Falconer and North Lanarkshire Council</b>
<i>Property information</i>

**Applicant: Mr Jim Falconer**  
**Authority: North Lanarkshire Council**  
**Case No: 200600627**  
**Decision Date: 17 July 2006**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## Decision 137/2006 – Mr Jim Falconer and North Lanarkshire Council

### ***Request for information relating to property – failure to respond within prescribed timescales – sections 10(1) and 21(1) – information not held and adequacy of searches***

#### **Facts**

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Mr Falconer requested from North Lanarkshire Council (the Council) information held by it relating to his property, in particular about a soil sample and the replacement of central heating and wooden flooring.

The Council provided information to Mr Falconer, and stated that it had provided all the information it held which was covered by this request.

#### **Outcome**

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The Commissioner found that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), by failing to respond to Mr. Falconer's requests for information within 20 working days, as required by section 10(1) of FOISA, or to his request for a review within the 20 working day timescale set out in section 21(1) of FOISA.

The Commissioner found that the Council did not comply with section 1(1) of FOISA by providing all the information it held relevant to Mr Falconer's request, in response to either his initial requests or his request for review.

As the Commissioner was satisfied with the steps taken by the Council during his investigation to locate the information requested, he did not require the Council to take any further action as a result of his decision.



## Appeal

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Should either the Council or Mr Falconer 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.

## Background

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1. On 24 November 2005 Mr Falconer wrote to the Council requesting that it supply him with copies of reports and correspondence about any soil sample taken in the past five years from the garden of his house; copies of any reports and correspondence on the replacement by the Council of his central heating system; and copies of any reports and correspondence about the replacement of the wooden flooring at his address, approximately 5 years previously.
2. The Council replied by letter (5 January 2006) providing a copy of the Sample Submission Document and the Analysis test report on a vegetation (chives) sample taken from Mr Falconer's property; a copy of a draft works order for the replacement of the central heating system for the address; and a copy of the draft works order for the renewal of wooden flooring for the address.
3. On 11 January 2006 Mr Falconer wrote to the Council asking it to review its decision, on the grounds that he had requested results of a soil sample and had been supplied with the results of a vegetation sample; that the information supplied was insufficient and that the Council should hold information containing the reason for replacing a central heating system, and particularly the type and capacity of the new system installed and its specification, type and make of gas fire installed, and documentation indicating that this system was passed as fit for service. Mr Falconer asked for the review to consider supplying similar details about his replacement flooring.
4. Having received no reply to his letter, Mr Falconer applied (21 March 2006) to me for a decision as to whether the Council had dealt with his information request in accordance with Part 1 of FOISA. He expressed dissatisfaction with the Council's decision on the grounds that he believed that information covered by the request had not been provided. He was seeking to satisfy himself of the safety of his central heating system and for this reason had requested the information. The applicant also asked me to investigate the Council's failure to conduct a review.



5. Following an Information Notice issued 5 April 2006, the Council wrote to Mr Falconer on 25 April 2006. The Council stated that a review had been conducted and confirmed that no soil sample had been taken from the address in question, only a plant sample (the information which had been supplied). Accordingly, the Council held no information on a soil sample for Mr Falconer's address. The Council explained the scientific reasons for a vegetative sample being analysed rather than a soil sample. It had, however, discovered further information in respect of Mr Falconer's central heating system and enclosed a gas safety record (dated 26 January 2006) for the system in question. Finally, the Council stated that it held no more information covered by the requests.
6. Mr Falconer was dissatisfied with the Council's review and wrote to my Office (25 May 2006) requesting that I investigate whether the Council held further information covered by his requests.
7. The case was allocated to an investigating officer.

## The Investigation

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8. Mr Falconer's appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request.
9. My investigating officer then contacted the Council on 6 June 2006 for its comments on Mr Falconer's application, as required by section 49(3) of FOISA. The Council responded on 23 June 2006, providing:
  - The information provided to Mr Falconer
  - Comments on the searches undertaken for the information requested, in response to the initial requests and subsequently.



## Submissions from the Council

10. The Council accepted that the initial requests, and requirement for review, by Mr Falconer had not been dealt with in accordance with FOISA, and it apologised for this. The Council explained that it now had procedures to ensure that review requests are timeously complied with, but in this instance the delay had been due to having to re-run searches to ensure that all information held by the Council was identified. During review, the Council found a gas safety record, which was relevant to the second request, and it sent this document to Mr Falconer. The Council stated that no further information was held and described the searches carried out to ascertain this.

## The Commissioner's Analysis and Findings

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11. Mr Falconer asked that I review the way in which the Council dealt with his requests, but specifically in relation to his requests for information to indicate the safety of his central heating system (request 2), and also his wooden flooring (request 3). I shall therefore not consider the request for information about a soil sample (request 1).
12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the receipt of the request to comply with the request for information. The Council did not respond to Mr Falconer's requests for information within this timescale.
13. 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. The Council failed to conduct a review of Mr Falconer's requests within that timescale.
14. I shall now consider whether the searches carried out for information relating to Mr Falconer's second and third requests were adequate and thorough.
15. The Council has explained that information on housing stock is held in the Housing Services Management System (HSMS) database. Repairs are issued by Design Services staff (Maintenance Officers) based in local Housing Offices and recorded on the HSMS. In dealing with Mr Falconer's request, the HSMS computer system was searched by staff of the Department of Housing and Property Services. At review stage a further search of the HSMS was conducted by the local office housing staff. The Council also searched the paper-based house file.



16. The Council stated that it would expect any relevant information requested by Mr Falconer would be found on the HSMS system. Prior to upgrades to this system, however, such information was not recorded on this system. Repairs information would not be expected to be found in the paper files, although a gas safety certificate was found, as would have been expected, and this was supplied to Mr Falconer. The Council stated that the HSMS system was upgraded 18 months previously and consequently would not contain the information Mr Falconer was seeking.
17. I accept that the Council has conducted a search of the areas (its HSMS database and the relevant paper file for Mr Falconer's property) where it would reasonably expect the information to have been held and has explained the type of information to be found in these files or systems.
18. Mr Falconer had indicated that he had attended the Finance Department in person and was unsatisfied at not being able to access documents which he believed related to his property. My investigating officer contacted the Council to establish if there was information held within this Department that was relevant to either request 2 or 3. The Council explained that this Department holds only financial records, and information of the type requested by Mr Falconer was not held in this Department. I am satisfied that this Department would not be expected to hold information relevant to request 2 or 3.
19. Mr Falconer asked that my investigation address specific issues about the way in which Council employees had responded to his concerns and complaints about the safety of his central heating system. However these issues relate to the way in which a service in respect of property is provided by the Council, rather than to its dealing with a request for information. Accordingly these are matters outside the scope of FOISA. Despite the fact that Mr Falconer's request was not dealt with in accordance with FOISA, I am satisfied that he has now received all the information which the Council holds which relates to his requests and I do not require the Council to take any remedial action.

## **Decision**

I find that North Lanarkshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), by failing to respond to Mr. Falconer's requests for information within 20 working days, as required by section 10(1) of FOISA, or to his request for a review within the 20 working day timescale set out in section 21(1) of FOISA.

I find that the Council did not comply with section 1(1) of FOISA by providing all the information it held relevant to Mr Falconer's request, in response to either his initial requests or his request for review.



As I am satisfied with the steps taken by the Council during his investigation to locate the information requested, I do not require the Council to take any further action as a result of his decision.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**17 July 2006**