



Scottish Information  
Commissioner

**Decision 179/2007 – Mr James Napier and the City of  
Edinburgh Council**

***Proposed upgrading of Colinton Mains Park***

**Applicant: Mr James Napier  
Authority: The City of Edinburgh Council  
Case No: 200701081  
Decision Date: 27 September 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 179/2007 – Mr James Napier and the City of Edinburgh Council

### *Failure of the City of Edinburgh Council to respond to a request for information and a request for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002 (FOISA)*

#### Facts

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1. On 1 June 2007, Mr Napier submitted an information request to the City of Edinburgh Council (the Council). Mr Napier requested the following information about the Oxfangs Regeneration: Proposed upgrading of Colinton Mains Park-
  - Has there been a decision on whether the current changing facilities will be refurbished or replaced?
  - In the event that the decision has been to replace the changing facilities, which of the three options was decided on?
  - In the event the decision has been to refurbish the existing changing facilities, what was the reason for this decision?
2. Mr Napier received an email from the Council on 1 June 2007, in which it acknowledged the request for information that he had submitted.
3. On 4 July 2007, Mr Napier submitted a request for a review to the Council, on the basis that he had not received a response to his request for information.
4. Mr Napier received an email from the Council on 9 July 2007, in which the Council acknowledged his request for a review and advised him that the review was being progressed.
5. On 27 August 2007, Mr Napier applied to the Scottish Information Commissioner, requesting that he investigate the Council's failure to respond to his request for information and request for a review within the relevant timescales laid down in FOISA.



6. The Commissioner notified the Council of the application made by Mr Napier and invited its comments (all in terms of section 49(3)(a) of FOISA) on 4 September 2007. Following further correspondence, a response was received from the Council on 25 September 2007. In its response, the Council accepted that it had not responded to Mr Napier's request for information in line with section 10(1) of FOISA as it should have done. It attributed this failure to an administrative error and advised that improved monitoring procedures had been put in place as a consequence. The Council also advised that it had now provided Mr Napier with a response to his request and provided the Commissioner with a copy of this.
7. In its response, the Council also acknowledged that it had received Mr Napier's request for a review, but stated that a further administrative error had led to the reviewing officer not being passed the relevant papers: as a consequence, no review had been carried out. Once again, the Council advised that procedures had been improved as a consequence.
8. The Commissioner received an email from Mr Napier on 19 September 2007, in which he acknowledged that he had received a response from the Council. He indicated that he was satisfied with the information given, but was not satisfied that his request had been dealt with properly.

### **The Commissioner's Analysis and Findings**

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9. Under section 49(1) of FOISA, except where an application is frivolous or vexatious, or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a decision notice to both the applicant and the public authority.
10. The Commissioner is satisfied that Mr Napier made a request for information to the Council on 1 June 2007 which was valid in terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 4 July 2007.
11. 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. The Council failed to respond to Mr Napier's request for information within that period.
12. The Commissioner is satisfied that Mr Napier submitted a valid request for a review to the Council in line with section 20 of FOISA.



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 respond to Mr Napier's request for review within that period, and indeed still has not done so.
14. The Commissioner notes, however, on the basis of the submissions that have been received from Mr Napier, that he has received a response to his request for information from the Council and is satisfied with that response.

## **Decision**

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The Commissioner finds that the City of Edinburgh Council did not deal with Mr Napier's request for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with sections 10(1) and 21(1).

As the Council's failure to comply with the timescales set down in section 10(1) and 21(1) of FOISA did not curtail Mr Napier in exercising his rights and he is now satisfied with the information that he has received, the Commissioner does not require the Council to take any further action.

## **Appeal**

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Should either party wish to appeal this decision, there is an appeal to the Court of Session on a point of law only. Any appeal must be made within 42 days after the date of intimation of this notice.

**Euan McCulloch**  
**Deputy Head of Investigations**  
**27 September 2007**