

# Decision Notice



Decision 177/2011 Mr James McLean and City of Edinburgh Council

Compliance with timescales

Reference No: 201101350  
Decision Date: 23 August 2011

[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 the City of Edinburgh 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 McLean.

## Background

---

1. On 31 March 2011, Mr McLean wrote to the Council requesting information relating to roof and chimney repairs at a specified address.
2. Mr McLean received an acknowledgement from the Council on 1 April 2011, confirming his request was being dealt with under FOISA.
3. On 25 May 2011 Mr McLean wrote to the Council, stating that he had not received a response to his information request and requesting a review.
4. The Council emailed Mr McLean on 1 July 2011, acknowledging his request for review and apologising for the length of time taken to respond. It indicated that it hoped to provide a response within the next week.
5. Mr McLean did not receive a response to his request for review and on 19 July 2011 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 Mr McLean 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

---

7. On 26 July 2011, the Council was notified in writing that an application had been received from Mr McLean and was invited to comment on the application. In particular, the Council was asked to explain its apparent failure to respond to Mr McLean's information request or his request for review.



8. The Council responded on 2 August 2011, indicating that it had responded to Mr McLean's request on 26 April 2011 and providing a copy of the relevant email. It acknowledged, however, that (apart from issuing an acknowledgement) it had not responded to Mr McLean's request for review: it apologised for this and advised that a review was being carried out.
9. On being advised by the investigating officer of the Council's claim that it had responded to his request, Mr McLean checked his email system and confirmed that he had not received the email in question on or around 26 April 2011.
10. A review was subsequently carried out and a response provided to Mr McLean on 16 August 2011. He continued to require a decision from the Commissioner.

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

---

11. 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.
12. In his requirement for review and in his application to the Commissioner, Mr McLean complained that he had not received any response to his request other than the acknowledgement of its receipt dated 1 April 2011. Mr McLean also confirmed during the investigation that he had re-checked his email system but had been unable to trace any response.
13. Having considered the submissions he has received from both parties on this point, on balance the Commissioner is satisfied that the Council issued a response to Mr McLean on 26 April 2011 (i.e. within the period of 20 working days specified in section 10(1) of FOISA). In all the circumstances, therefore, the Commissioner is satisfied that the Council complied with the requirements of section 10(1), even if (for reasons which cannot be explained) that response was not received by Mr McLean.
14. Section 21(1) of FOISA gives authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant in this case.
15. In its submissions, the Council confirmed that it had not undertaken a review, acknowledging that this was unacceptable and apologising for its failure to carry out a review when required to do so. The Council has now addressed this matter and communicated the outcome of its review to Mr McLean.
16. The Commissioner finds that the Council failed to carry out a review within the 20 working days allowed by section 21(1) of FOISA.



## DECISION

The Commissioner finds that the City of Edinburgh 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 Mr McLean. While accepting that the Council responded to Mr McLean's request for information within the relevant timescale laid down by section 10(1) of FOISA, he finds that it failed to comply with Mr McLean's requirement for review within the permitted timescale under section 21(1) of FOISA.

Given that the outcome of the Council's review has now been communicated to Mr McLean, the Commissioner does not require the Council to take any action in respect of this failure in response to Mr McLean's application.

## Appeal

---

Should either Mr McLean or City of Edinburgh 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**23 August 2011**



## Appendix

---

### 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.

...

##### 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.

...