

# Decision Notice



Decision 074/2013 Dr Rebecca Gordon-Nesbitt and Glasgow City Council

Failure to respond to request and requirement for review

Reference No: 201300714  
Decision Date: 01 May 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 Glasgow City 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 Dr Gordon-Nesbitt.

## Background

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1. On 5 November 2012, Dr Gordon-Nesbitt wrote to the Council requesting certain specified information.
2. Dr Gordon-Nesbitt received no response to her request for information.
3. On 6 December 2012, Dr Gordon-Nesbitt emailed the Council requesting a review in respect of its failure to respond.
4. Dr Gordon-Nesbitt did not receive a response to her requirement for review and, on 15 March 2013, emailed the Commissioner, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Dr Gordon-Nesbitt 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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6. On 21 March 2013, the Council was notified in writing that an application had been received from Dr Gordon-Nesbitt and was invited to comment on the application.
7. The Council responded on 26 April 2013, and its submissions are considered in the Commissioner's analysis and findings below.
8. On 30 April 2013, the Council issued a review response to Dr Gordon-Nesbitt.



## Commissioner's analysis and findings

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9. 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, subject to certain exceptions which are not relevant in this case.
10. As the Council did not provide a response to Dr Gordon-Nesbitt's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.
11. 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.
12. As the Council did not provide a response to Dr Gordon-Nesbitt'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 Gordon-Nesbitt's requirement for review, the Commissioner does not require it to take any further action in this case. She notes that in its response to Dr Gordon-Nesbitt's requirement for review, the Council apologised for the delay in responding and explained that the failure to respond was an administrative error on its part.

## DECISION

The Commissioner finds that Glasgow City 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 Gordon-Nesbitt, in particular by failing to respond to Dr Gordon-Nesbitt's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Council has now responded to Dr Gordon-Nesbitt's requirement for review, the Commissioner does not require the Council to take any action in respect of these failures.



## Appeal

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Should either Dr Gordon-Nesbitt or Glasgow City 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.

**Alison Davies**  
**Deputy Head of Enforcement**  
**1 May 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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##### 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.

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