

# Decision Notice

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## Decision 156/2014 Roy Mackay and Scottish Borders Council

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### **Breaches of the Data Protection Act 1998:**

#### **Failure to respond within statutory timescales**

Reference No: 201401331

Decision Date: 15 July 2014



Scottish Information  
Commissioner

## Summary

On 2 April 2014, Mr Mackay asked Scottish Borders Council (the Council) for information about data protection breaches involving members of panels under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations. 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 comply with Mr Mackay's requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the Council to comply with the requirement for review.

## Background

| Date               | Action   |
|--------------------|--|
| 2 April 2014       | Mr Mackay made an information request to the Council.  |
| 4 and 7 April 2014 | Although the Council sent an acknowledgement to Mr Mackay, it did not respond to the information request.  |
| 6 May 2014         | Mr Mackay wrote to the Council requiring a review of its failure to respond.   |
|                    | Mr Mackay did not receive a response to his requirement for review.  |
| 18 June 2014       | Mr Mackay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 20 June 2014       | The Council was notified in writing that an application had been received from Mr Mackay and was invited to comment on the application.  |
|                    | The Council did not provide the Commissioner with any submissions.   |

## Commissioner's analysis and findings

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 Mackay's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the Council did not provide a response to Mr Mackay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
5. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the

Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 of FOISA.

## **Decision**

The Commissioner finds that the Scottish Borders 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 Mackay. In particular, the Council failed to respond to Mr Mackay's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide Mr Mackay with a response to his requirement for review, by **Friday 29 August 2014**.

## **Appeal**

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Should either Mr Mackay or Scottish Borders 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 Scottish Borders Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Scottish Borders Council has failed to comply. The Court has the right to inquire into the matter and may deal with Scottish Borders Council as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**  
**15 July 2014**

**Scottish Information Commissioner**

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