

# Decision Notice

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**Decision 017/2018: Mr Brian Gourlay and West Dunbartonshire Council**

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**Access to Occupational Health: failure to respond within statutory timescales**

Reference No: 201702264

Decision Date: 8 February 2018



Scottish Information  
Commissioner

## Summary

West Dunbartonshire Council (the Council) was asked for information about access to the Occupational Health service. This decision finds that the Council failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

## Background

Date	Action
23 September 2017	Mr Gourlay made an information request to the Council.
	The Council did not respond to the information request.
9 November 2017	Mr Gourlay wrote to the Council requiring a review of its failure to respond.
	Mr Gourlay did not receive a response to his requirement for review.
16 December 2017	Mr Gourlay wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
16 January 2018	The Council was notified in writing that an application had been received from Mr Gourlay and was invited to comment on the application.
2 February 2018	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

1. The Council confirmed that Mr Gourlay's request and request for review had been overlooked. It explained the difficulty it was experiencing because of the amount of correspondence it was receiving from Mr Gourlay, which included information requests, subject access requests and individual queries. It also explained the difficulty of sifting through duplicate correspondence from Mr Gourlay.
2. The Council confirmed that it was now checking all correspondence received from Mr Gourlay, to ensure other requests had not been missed.
3. 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.
4. It is a matter of fact that the Council did not provide a response to Mr Gourlay's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

5. 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
6. It is a matter of fact that the Council did not provide a response to Mr Gourlay's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. As the Council responded to Mr Gourlay's requirement for review on 2 February 2018, the Commissioner does not require it to take any further action in relation to his application.
8. The Commissioner notes that the Council apologised to Mr Gourlay for its failure to respond.

## Decision

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

The Commissioner does not require the Council to take any action in respect of these failures in response to Mr Gourlay's application, given that a response has now been issued.

## Appeal

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Should either Mr Gourlay or West Dunbartonshire 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.

**Alison Davies**  
**Deputy Head of Enforcement**

**8 February 2018**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**