



Scottish Information  
Commissioner

**Decision 047/2005 Mr P and Dumfries and Galloway Council**

*Failure to respond to request for information relating to the applicant*

**Applicant: Mr P**

**Authority: Dumfries and Galloway Council**

**Case No: 200500105**

**Decision Date: 7 November 2005**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 047/2005 Mr P and Dumfries and Galloway Council

**Failure to respond to request for information and request for review – request for personal data about the applicant – section 38(1)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA) – failure to respond to request for information within timescale required by section 10 of FOISA – failure to respond to request for review within timescale required by section 21 of FOISA – failure to provide advice and assistance as required by section 15 of FOISA**

### Facts

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Mr P requested information from Dumfries and Galloway Council (the Council) under FOISA on 6 January 2005. Although an acknowledgement was sent, no substantive response was provided within the 20 working days required by section 10 of FOISA. Mr P reiterated his request a number of times and questioned the Council's failure to respond. This questioning of the Council can be construed as a request for a review under the terms of section 20 of FOISA. However, no response to this was provided within the statutory 20 working day period. During the course of this investigation, the Council responded to the request as fully as could reasonably be expected. Mr P was still dissatisfied with this outcome and so sought a decision from the Commissioner on whether the Council had breached Part 1 of FOISA.

### Outcome

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The Commissioner found that the Council had failed to comply with sections 10 and 21 of FOISA by failing to respond to Mr P's request for information and request for review within the statutory timescales. He also found that the Council failed to advise and assist the applicant as required by section 15 of FOISA. As the Council responded to the request for information in the course of this investigation, no further steps are required to comply with FOISA in response to this decision.



## Appeal

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Should either Dumfries and Galloway Council or Mr P wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

## Background

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1. Mr P sent an email to Dumfries and Galloway Council on 6 January 2005, requesting access to the following information and indicating that his request was to be considered under FOISA:
  - a) The file on himself held by the Council's Finance Department
  - b) The name of the official who had "authorised arrestment of full council tax against undertaking already given to cist"
  - c) Evidence that a Council official had claimed to have seen, showing that corrections had been made to his council tax records
  - d) Data that another official had claimed had been corrected and his correspondence "misleading" the Information Commissioner on this matter.

[NB part (d) of this request refers to the (UK rather than Scottish) Information Commissioner, the official responsible for overseeing the Data Protection Act across the whole of the UK.]
2. Under section 10 of FOISA, the Council was required to provide a response no later than the 20<sup>th</sup> working day following receipt of the request on 6 January 2005. This means that a response should have been issued by 3 February 2005.
3. Mr P resubmitted his request for information several times over the 10 days following 6 January 2005. On 12 January 2005, he emailed my office to ask staff to require the Council to comply with FOISA. In this email he also alleged that the Council was in breach of the Data Protection Act 1998.



4. A member of my staff responded to Mr P on the same day, advising him on the processes involved when using FOISA to access information. This email advised him on the appropriate steps to follow if he was dissatisfied with the Council's response to his request, or if none were received within the 20 working days following his initial request. This email noted that since FOISA had only come into force at the beginning of 2005, and there had been public holidays in the first days of the year, the 20 working days within which a response should be provided could not expire before the beginning of February 2005.
5. The Council wrote to Mr P acknowledging his request on January 13 2005, but no substantive response was provided.
6. On 28 January 2005, Mr P emailed the Council again, informing it that my office had advised him to make contact again with regard to the provision of information under FOISA. He stated that the Council had 20 days to reply to this email or I would intervene. This email was sent before the end of the 20 working day period on 3 February and therefore was not a valid request for review under section 20 of FOISA.
7. The Council acknowledged the email of 28 January in a letter of 3 February 2005. Again, however, no substantive response was issued.
8. On 18 February 2005, Mr P again referred to his request under FOISA in an email to the Council. In this email, Mr P stated, "I also refer you to my previous requests per Freedom of Information Act for which you only have 5 days to comply with per Act (2<sup>nd</sup> notice of 20 days)".
9. Mr P's mistaken belief that his email of 28 January 2005 constituted a request for a review under section 20 of FOISA means that his assertion about to the timescale for response in this email was inaccurate. However, I have construed this statement detailed in paragraph 8 above as a request for review nonetheless. Read in conjunction with his previous correspondence, this email clearly indicates dissatisfaction with the Council's failure to respond to his request. Paragraph 64 of the Code of Practice on the discharge of functions by public authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code) indicates that where a public authority has not made an applicant aware of their right to seek a review under FOISA, any written communication that questions the authority's decision (and I would interpret "decision" in this context as including failure to arrive at and communicate a decision) should be considered a request for review.



10. In a letter of 20 February 2005, a Council official responded to points and questions raised by Mr P in a number of emails. This letter sought clarification of the information Mr P was seeking under FOISA, in response to emails dated 12 and 18 February. No response to the request of 6 January was provided. The Council has confirmed that this letter was the only substantive response to Mr P's requests under FOISA described above.
11. Mr P emailed my office on 25 February 2005, again asking staff to intervene in his case. The Officer who had written to him previously responded by asking for further details of when the information request and request for review were sent to the Council.
12. A series of correspondence between the applicant and staff in my office followed his second request that we intervene. Mr P was not able to provide adequate evidence of what requests had been sent to the Council and when. At this point, the Council was asked to provide information to help determine whether or not he was in a position to make a valid application for a decision by me. Correspondence and discussion with the Council allowed understanding of the sequence of events described above.
13. On 5 May, the Council confirmed that no response had been provided to Mr P's request for information of 6 January, and subsequent related correspondence, other than the acknowledgements described above and the request for clarification in the letter of 20 February. On this basis, the 20 working days within which the Council should have responded to the request for a review dated 18 February had passed. However, at the time of Mr P's second request for my intervention, this period had not elapsed, and so his application to me was not valid.

## **The Investigation**

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14. Mr P was advised on how to make a valid application to me on 6 May 2005. A valid application for decision was then received on 7 May 2005. An Investigating Officer was assigned to the case.



### **Attempts to effect settlement**

15. In the course of communications between my staff and the Council, it had become clear that Mr P's request for information had been made in the context of an ongoing series of correspondence and disputes with the Council. Mr P writes to the Council frequently, often several times in the same day, and in a manner which does not facilitate easy understanding (illustrated by repeated resending of emails and overlapping content).
16. The information request of 6 January related to only one part of Mr P's wide concerns with the Council. The Council suggested that should the parties to this case meet to discuss and clarify what information Mr P needed, this might go some way further towards achieving a satisfactory outcome than simply focussing on the particular questions raised in this case.
17. The Investigating Officer wrote to Mr P on 12 May 2005 to confirm that he had made a valid application for decision and that an investigation would now commence. She also passed on the Council's suggestions with respect to a meeting. The Investigating Officer offered to arrange a meeting in Mr P's home town, where she would observe and record discussions with a view to reaching at least a partial settlement of this case. The Investigating Officer pointed out that one of the advantages of holding a meeting was that it would allow the parties to discuss issues that could not be addressed in the context of a formal investigation.
18. Mr P initially agreed to attend such a meeting, and arrangements were made. However, he later decided not to take part in any informal discussions, and asked the Investigating Officer to proceed only with the full investigation into his case. As a result, no further attempts were made to effect settlement of this case.

### **The formal investigation and steps taken to satisfy Mr P's request**

19. Although steps were taken to attempt a settlement in this case, a full investigation proceeded alongside these.
20. The Investigating Officer wrote to the Council on 12 May 2005 informing it that a valid application had been received from Mr P and that a full investigation would commence. The Council was invited to comment on the case. It was also asked to provide a range of information including:
  - a) Copies of any internal correspondence or other documents relating to Mr P's request for information of 6 January and subsequent request for review
  - b) Copies of any information falling under the scope of the final 3 parts of the information request as detailed in paragraph 1 above.
  - c) Details of whether, in the Council's view, any of this information was exempt from release under the terms of the Act, and if so, why.



- d) Details of the Council's procedures for handling requests for information under the terms of FOISA.
  - e) Details of any reasons for the Council's failure to respond to the applicant's request within the statutory 20 working day time limit.
21. The letter of 12 May 2005 observed that Mr P's request of 6 January 2005 appeared to seek access to his own personal data. It indicated that access to the applicant's files in the Finance Department (part (a) of the request) would be likely to fall under the scope of the Data Protection Act 1998, and so outwith my remit. However, this letter noted that other parts of the request, for the name of an officer, copies of correspondence between the Council and the (UK) Information Commissioner's Office, and evidence of correction of records would not necessarily be the applicant's own personal data.
22. The Council's response to this letter was received on 17 May 2005. This indicated that the Council did not consider any of the information sought (other than personal data about the applicant) to be exempt from release. However, this letter (which was sent when a meeting was planned to allow discussion of these matters with the applicant) indicated that the Council was keen to use this meeting to clarify exactly what information was being sought by the applicant.
23. The Council stated that a breakdown in its internal communications system at the beginning of January 2005 had led to the failure to respond to Mr P's request for information. Copies of internal documents make clear that Mr P's request was received, and that there had been discussion of whether it should be considered under the Data Protection Act 1998 or FOISA before the acknowledgement was sent. However, there was a failure to respond to the substance of the request, or take steps to clarify what information was being sought.
24. In a follow up letter dated 18 May 2005, the Council provided the Investigating Officer with a copy of a letter to the (UK) Information Commissioner's Office from a Council official. This was identified as the letter referred to in part (d) of Mr P's request (which referred to correspondence "misleading" the Information Commissioner on the correction of records).
25. With the Council's consent, the Investigating Officer forwarded a copy of this letter to Mr P on 23 May 2005 in fulfilment of this part of the request. At this stage, the Council was still hoping to seek clarification of the request in a meeting before identifying information that would fulfil other parts of the request.
26. On 25 May, Mr P instructed the Investigating Officer to cancel the planned meeting with the Council and instead proceed solely with the formal investigation.



27. Following this cancellation, the Council took steps to respond to the other parts of Mr P's request.
28. On 1 June, an email was sent to Mr P confirming the name of the Council official requested in part (b) of his email of 6 January (which sought the name of the person who had "authorised arrestment of full council tax against undertaking already given to cist").
29. On 21 June, a further email was sent to Mr P by the Council, confirming that the information sought within the first part of Mr P's request (access to the applicant's personal file within the Finance Department) was exempt from release under section 38(1)(a) of FOISA because it was his own personal data. The email advised Mr P on how to make a request for this information under the Data Protection Act 1998.
30. Following the sending of this email, the Investigating Officer sought to confirm that the full contents of Mr P's file within the Council's Finance Department would be considered his own personal data under the Data Protection Act 1998. The Council confirmed that this was the case on 1 July 2005, and therefore I am satisfied that this information was correctly exempted from release under the terms of section 38(1)(a) of FOISA. In these circumstances, an applicant can seek access to their own personal information by making a subject access request under the Data Protection Act 1998. Only the subject of the data can seek access via this route, whereas release under FOISA would inappropriately suggest that the data was accessible to all.
31. The remaining outstanding information sought in Mr P's request was the "evidence" that his original email indicated a Council official had referred to, demonstrating that his records had been corrected. The Investigating Officer emailed Mr P on 17 June 2005 to seek clarification of what evidence was being sought, and the context in which this had been referred to.
32. Mr P's response indicated that he wanted the official's response and any evidence that had allowed her to claim that his records had been corrected. He was not able to indicate what kind of evidence he believed the official had referred to, and so it was not clear whether such evidence would be recorded information, or if it would be anything other than actual (personal) records, corrected or otherwise.
33. The Investigating Officer then contacted the Council to seek information on any correspondence from the named official that would allow identification of any recorded information held by the Council that fitted the description provided by Mr P.



34. Although the Council provided copies of correspondence that had been sent to Mr P, these did not include any references to evidence of the correction of records. The investigating Officer was therefore unable to identify what information might fall under the scope of this request.

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

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35. In this case, I must conclude that the Council has failed to comply with a number of the requirements of Part 1 of FOISA. Although the process of investigation has been rather complex in this case, the issues that it raised are actually quite straightforward.
36. Mr P made his request for information on January 6 2005. Although his request specified that it was being made under FOISA, parts of it, including the request for access to his own file and (possibly) the request for evidence of the correction of his own records, should have been identified as requests for personal data relating to him and dealt with accordingly under the Data Protection Act 1998. Such requests are exempt from release under section 38(1)(a) of FOISA.
37. The Council failed to advise the applicant of how to make a subject access request under the Data Protection Act in response to his request. It neither responded to the request, nor confirmed that this information was exempt from release under FOISA.
38. Some of the information sought by Mr P's request, most clearly the name of the Council official (part b of the request), was appropriately sought under FOISA, however. This information was also not provided and no reasons were given for the failure to do so.
39. It is clear that one cause of the Council's failure to respond adequately to Mr P's request was that it was not clear exactly what information was being sought by some parts of his request. In this situation, FOISA places the onus upon public authorities to advise and assist a requestor, to seek clarification where necessary, and to help the requestor in framing their request, for example by describing the types of information that are held and which may be relevant. No such action was taken in response to Mr P's initial request of 6 January. Clarification was sought on the nature of Mr P's requests under FOISA in response to his later emails, but the request for clarification made no reference to the initial request, or which parts of it were not clear to the Council.



40. I therefore conclude that the Council failed to advise and assist Mr P as it is required to do under section 15 of FOISA. It also failed to respond to his request for information within the 20 working day timescale set out in section 10 of FOISA. It also failed to respond to his request for review within the 20 working day timescale set out in section 21 of FOISA.
41. The Council has informed me that steps have been taken to avoid this situation arising in future, and I am also aware that the Council now has a member of staff responsible for coordinating responses to requests under FOISA.

### **The Council's responses to Mr P's request**

42. In the course of this investigation, the Council recognised that the responses provided to Mr P fell below the standard that would be expected under FOISA and took steps to rectify this situation.
43. The Council has written to Mr P to inform him that the information in his file constitutes personal data and so is exempt from release under section 38(1)(a) of FOISA. It has also advised him of how to make a subject access request under the Data Protection Act 1998 should he wish to do so. For the purposes of FOISA, this means that a proper response has now been provided to part (a) of the request. I understand, however, that to date no request has been made under the Data Protection Act 1998.
44. The Council has also confirmed the name of the Council official requested in part (b) of Mr P's request, and provided a copy of the correspondence requested in part (d).
45. The Council has not been able to provide the "evidence" of the correction of records sought by Mr P in part (c) of his request however. In this part of the request, it has not been possible to establish what recorded information might constitute the evidence of correction of records. While the Investigating Officer has sought further information from the applicant, he has not been able to clarify what evidence he understands the Council to hold. Her discussions with the Council and the evidence provided by them have not allowed the identification of such evidence. In the absence of further clarification from the applicant, it is not clear to me (and I do not think it could be clear to the Council) what evidence might exist, beyond the corrected records themselves.
46. In the light of these steps, I consider that the Council has now responded as fully as can be expected, given the nature of the request made by Mr P. This means that I will not require it to take further remedial action to be taken to ensure compliance with FOISA in this case.



## **Decision**

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I find that Dumfries and Galloway Council (the Council) breached Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr P's request.

It failed to advise and assist the applicant as required by section 15 of FOISA. It also failed to respond to Mr P's request of 6 January within the 20 working day period set out in section 10(1) of FOISA. Finally, the Council has breached the requirements of section 21(1) of FOISA by failing to respond to a request for review within 20 working days.

I am satisfied that the Council has now responded as fully as can reasonably be expected to Mr P's request for information, and so I do not require any further remedial steps to be taken in response to this decision.

**Kevin Dunion**

**Scottish Information Commissioner**

**7 November 2005**