

# Decision Notice 138/2019

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## **Complaints to Fife Council: failure to respond**

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**Applicant: The Applicant**

**Public authority: Fife Council**

**Case Ref: 201901154**



Scottish Information  
Commissioner



## Summary

Fife Council (the Council) was asked for details of complaints made to the Council about Graham's Dairy (previously known as First Milk). 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) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with the Applicant's requirement for review within the timescale set down by FOISA and the EIRs.

## Background

Date	Action
15 March 2019	The Applicant made an information request to the Council.
21 March 2019	The Council acknowledged receipt of the request.
8 April 2019	The Council extended the timescale for responding to the information request, relying on regulation 7(2) of the EIRS.
17 May 2019	The Applicant wrote to the Council, requiring a review of its failure to respond.
21 May 2019	The Applicant submitted a second requirement for review.
24 May	Although the Council acknowledged the requirement for review, the Applicant did not receive a response to his requirement for review.
28 May 2019	The Applicant was provided with updates, but not a response to his requirement for review.
17 June 2019	The Council wrote to the Applicant again, acknowledging its failure to respond on time but still not providing a substantive response to his requirement for review. The Applicant was advised of the right to apply to the Commissioner.
20 June 2019	The Applicant was provided with a further update.
7 July 2019	The Applicant 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. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
17 July 2019	The Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
11 September 2019	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

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1. It is apparent from the terms of the request that at least some of the information caught by it will be environmental information as defined by regulation 2(1) of the EIRs. In the circumstances, the Commissioner will consider the handling of this case under the EIRs.
2. The Council acknowledged that it had failed to comply with timescales. It explained that the Information Request Team (IMRT) was overwhelmed with the level and complexity of information requests at the time. A review of the IMRT had been carried out in relation to this concern, identifying a resource issue. The Council confirmed it was in the process of recruiting more staff.
3. The Council also explained that three different services were involved with handling this request and that there had been difficulty in identifying all the information requested in the structure required. Due to the large amount of documentation involved, the Council relied on regulation 7(2) of the EIRs to extend the timescale for responding. It noted that it was considering the future management of related requests.
4. Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working day following the date of receipt of the request to comply with a request for information. Under regulation 7(1) of the EIRs, this timescale can be extended by a further period of up to 20 working days, provided certain requirements are met. In particular, there are notification requirements in regulation 7(2) and (3).
5. The Council appears to have notified the Applicant in terms of regulation 7(2) and (3). In any case, the Applicant has not challenged the Council's application of regulation 7(1): he acknowledged the extension of time and sought a review after the Council had failed to respond within the additional 20 working days.
6. It is a matter of fact that the Council did not provide a response to the Applicant's request for information within the additional 20 working days claimed under regulation 7(1), so the Commissioner finds that it failed to comply with regulation 5(2)(a) of the EIRs.
7. Regulation 16(4) of the EIRs 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.
8. It is a matter of fact that the Council did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with regulation 16(4) of the EIRs.
9. The Council submitted that a review was carried out on 17 June 2019, but only in relation to the timescale breach. It acknowledged that it had not complied with the required timescale.
10. The Council responded to the Applicant's requirement for review on 5 September 2019, so the Commissioner does not require it to take any further action in this case, in response to the Applicant's application.
11. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

## **Decision**

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The Commissioner finds that Fife Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant. In particular, the Council failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

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

## **Appeal**

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Should either the Applicant or Fife 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**18 September 2019**

**Scottish Information Commissioner**

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