

# Decision Notice



Decision 205/2013 Mr John McLean and the Scottish Public Services  
Ombudsman

Change control forms

Reference No: 201301375  
Decision Date: 16 September 2013

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

**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

On 24 January 2013, Mr McLean asked the SPSO, with reference to its Complaints and Investigations Guidance, for copies of approved change control forms. The SPSO responded by providing a blank copy of the relevant change control form. Following an investigation, the Commissioner found that the SPSO failed to provide Mr McLean with the required notice that the information he sought was not held. Having communicated this to Mr McLean, she did not require the SPSO to take any action.

## Relevant statutory provisions

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

---

1. On 24 January 2013, Mr MacLean wrote to the SPSO requesting (in the absence of a change control register relative to the SPSO's Complaints and Investigations Guidance (the Guidance)) copies of the relevant change control forms that were approved for implementation.
2. The SPSO responded on 19 February 2013. It informed Mr McLean that it did not hold a change control register. The SPSO provided Mr McLean with a blank copy of the change control form referred to in the Guidance.
3. On 20 February 2013, Mr McLean wrote to the SPSO requesting a review of its decision. Mr McLean stated that he sought copies of the *completed* SPSO change control forms "that reflected all changes that had taken place over the existence of [the principal Guidance]".
4. The SPSO notified Mr McLean of the outcome of its review on 30 May 2013. The review outcome reiterated that the SPSO had no change control register. It did not address Mr McLean's request for completed change control forms.



5. On 12 June 2013, Mr McLean wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPSO's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr McLean made a request for information to a Scottish public authority and 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

---

7. The investigating officer contacted the SPSO on 3 July 2013, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The SPSO was specifically asked to confirm whether it held any completed change control forms falling within the scope of Mr McLean's request, and to explain the steps taken to establish this.
8. The SPSO responded on 23 July 2013.

## Commissioner's analysis and findings

---

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr McLean and the SPSO. She is satisfied that no matter of relevance has been overlooked.
10. Mr McLean appealed to the Commissioner on the basis that the SPSO failed to provide him with the requested information. Mr McLean stated that at no stage had the SPSO suggested or advised that such documentation did not exist, despite opportunities for it to do so. He expressed wider concerns about the adequacy of the SPSO's change control process and its compliance with ethical standards, but these are beyond the Commissioner's remit.
11. The SPSO confirmed to the investigating officer that it did not hold copies of completed change control forms. By way of explanation, the SPSO submitted that the purpose of the change control form was to log actions, targets, implementation dates, acknowledge requests and to note whether approval was either granted or refused. It had created a master copy of such a form, which had been provided to Mr McLean, but the procedure (referred to in Section A of the Guidance) for using this form had not yet been implemented and therefore no completed forms were held.



12. The SPSO explained that its current arrangement was to accept change requests verbally or by email. The changes were then updated on a master copy of the Guidance, to be released when approved by a Director of the SPSO. The SPSO confirmed that it did not hold a history of such requests in a recordable format.
13. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If the authority does not hold any information covered by the request, it is required to give notice in writing to that effect, under section 17(1).
14. The Commissioner is satisfied that Mr McLean's request was clear and unambiguous, specifically following the clarification offered in his request for review.
15. The Commissioner is also satisfied, given the explanations provided by the SPSO during the investigation, that it did not hold completed change request forms at the time it received Mr McLean's request (or, for that matter, subsequently). However, by failing to give Mr McLean notice to that effect in terms of section 17(1) of FOISA, the SPSO failed to comply with Part 1 of FOISA.

## DECISION

The Commissioner finds that the SPSO failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McLean by failing to notify him (in terms of section 17(1) of FOISA) that it does not hold the information he requested.

Given that Mr McLean was informed during the investigation that the SPSO does not hold the information he asked for, the Commissioner does not require the SPSO to take any action in respect of this failure.



## Appeal

---

Should either Mr McLean or the Scottish Public Services Ombudsman 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.

**Margaret Keyse**  
**Head of Enforcement**  
**16 September 2013**



## Appendix

---

### 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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

##### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...