



# Decision Notice 074/2024

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## Ayr Station Hotel – failure to respond

**Applicant:** The Applicant

**Authority:** South Ayrshire Council

**Case Ref:** 202400371

### Summary

The Applicant asked the Authority for information relating to the Station Hotel in Ayr, with specific reference to a fire which occurred there on 25 September 2023. This decision finds that the Authority failed to respond to the request and request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

### Background

1. The Applicant made an information request to the Authority on 19 December 2023 and received an auto-reply the same day.
2. The Authority did not respond to the information request.
3. On 8 February 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond and chased it up again on 20 February 2024.
4. The Applicant did not receive a response to their requirement for review.
5. The Applicant wrote to the Commissioner, stating that they were dissatisfied with the Authority's failure 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.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

## Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 11 March 2024.
8. The Commissioner received submissions from the Authority on 30 April 2024.
9. 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 [Decision 218/2007](#)<sup>1</sup>, the Commissioner confirmed, at paragraph 51, that where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
10. The Authority accepted that it had failed to respond to the request and requirement for review within the timescales allowed by FOISA and the EIRs.
11. The Authority explained that the delay in issuing a response to the Applicant was due to resources being diverted to deal with a dangerous building (the Station Hotel), including working on getting a major train line re-opened. It explained that staff time was focussed on dealing with this matter and could not be re-directed (at that time) to deal with the information request.
12. 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. The same timescale is laid down by regulation 5(2)(a) of the EIRs.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
14. 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. The same timescale is laid down by regulation 16(4) of the EIRs.
15. It is a matter of fact that the Authority 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 section 21(1) of FOISA and regulation 16(4) of the EIRs.
16. The Authority responded to the Applicant's requirement for review on 15 April 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the Authority apologised to the Applicant for its failure to comply.

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<sup>1</sup> <https://www.itspublicknowledge.info/decision-2182007>

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information request made by the Applicant. In particular, the Authority 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 regulations 5(2) and 16(4) of the EIRs. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

## **Appeal**

Should either the Applicant or the Authority 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.

**Wendy Snedden**  
**Freedom of Information Officer**

**01 May 2024**