



Scottish Information
Commissioner
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Decision Notice 002/2026

Allocation of property under the Housing (Scotland) Act 1987 – failure to respond

Authority: West Dunbartonshire Council
Case Ref: 202501735

Summary

The Applicant asked the Authority for information about allocation of a specific property under the Housing (Scotland) Act 1987. This decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 1 August 2025.
2. The Authority responded to the information request on 29 August 2025.
3. On 30 August 2025, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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 7 October 2025.
8. The Commissioner received submissions from the Authority on 20 October 2025. These submissions are considered below.
9. The Authority explained that during the review process, it became clear that it would not be able to meet the statutory 20 working day deadline due to the volume and complexity of the information involved.
10. The Authority stated that 26 September 2025 was a public holiday and not a working day and it claimed that the Applicant was therefore incorrect to assume that the deadline for the review was 26 September, and that the correct statutory deadline was 29 September 2025.
11. Furthermore, the Authority submitted that the Applicant was contacted by a member of the Authority's FOI team to advise that the response would be issued by 6 October 2025. This was to allow sufficient time to gather and assess the relevant material. The Authority commented that the Applicant did not respond to that email or raise any objection to the proposed extension.
12. The Authority stated that the review response was issued on 6 October 2025, in line with the revised timescale communicated to the Applicant. It acknowledged that this represented a delay of 5 working days beyond the statutory deadline.
13. While the Authority acknowledged that the response was issued outside the statutory timeframe, it stated that it acted in good faith and in line with the provisions of FOISA by informing the Applicant of the delay and revised date. The Authority stated that, had the Applicant been dissatisfied with this approach, it would have welcomed a response at the time to discuss any concerns.
14. The Authority also noted that the Applicant had submitted other requests and enquiries to it within a short period of time. It stated that, while this wider activity was not directly related to the present appeal, it did provide context for the volume of correspondence being managed by the Authority during this time.
15. The Commissioner notes that under FOISA an applicant is neither obliged, nor expected, to raise an objection to notification from an authority that it will not meet the statutory timeframe.
16. The Commissioner also notes that under section 73 of FOISA a "working day" means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971 (BFDA), is a bank holiday in Scotland. Local public holidays are not covered by the BFDA. As such, the Commissioner has concluded that while Scottish local authorities have powers to make certain days "local" public holidays, such holidays are considered working days under FOISA.
17. The Commissioner notes that the Authority provides a [schedule for 2025/26 public holidays dates in West Dunbartonshire](#)¹ on its website. According to the schedule, a local holiday was set for 29 September 2025, not 26 September 2025, as was stated by the Authority.

¹ <https://www.west-dunbarton.gov.uk/council/public-holidays/>

18. In any case (as set out above, and even if the date of the holiday provided by the Authority had been correct), local holidays are not bank holidays under FOISA and cannot therefore be taken into consideration as a non-working day.
19. The Commissioner recognises that it is good practice for public authorities to provide an applicant with an apology together with an estimated response date, if there is likely to be any delay to responding to a request. The Authority notified the Applicant of its revised timescale for providing the review response on 12 September 2025 (although it did not apologise).
20. However, the deadlines under FOISA are absolute and failure to comply is a breach of the legislation. The Applicant still had the right to appeal to the Commissioner regarding the Authority's failure to respond to his request for review within the timescales.
21. Therefore, the last day for the Authority to respond to the Applicant was 26 September 2025. There is no provision under FOISA for extending the statutory deadline within which a review outcome must be provided.
22. 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. This is subject to qualifications which are not relevant in this case.
23. 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.
24. The Authority responded to the Applicant's requirement for review on 6 October 2025, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA. 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.

Jill Walker
Deputy Head of Enforcement

12 January 2026