



Scottish Information
Commissioner
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Decision Notice 010/2026

Planning application – failure to respond

Applicant: The Applicant

Authority: Falkirk Council

Case Ref: 202501694

Summary

The Applicant asked the Authority for information about a planning application for the erection of 82 houses and 24 flats at Kilsyth Road, Banknock. This decision finds that the Authority failed to respond to Applicant's requirement 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 2 May 2025.
2. On 3 June 2025, the date the response was due by, the Authority notified the Applicant that it was dealing with the request under the EIRs and advised that it expected to respond within 40 working days from the date it received the request. It did not explain why it was extending the time to respond, nor did it advise the Applicant of his right to seek a review of this decision.
3. The Applicant received a response to his request on 27 June 2025.
4. On 18 August 2025, the Applicant wrote to the Authority requiring a review of its decision.
5. The Authority did not respond to the Applicant's requirement for review.
6. On 24 September 2025, 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. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.

7. 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

8. 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 26 September 2025.
9. The Commissioner received submissions from the Authority on 10 October 2025. These submissions are considered below.
10. The Authority acknowledged that it failed to explain to the Applicant why it had decided to apply a time extension under regulation 7 of the EIRs and to notify him of his right to seek a review of that decision. It said that the team responsible for handling the request will be reminded of the requirements of regulation 7 of the EIRs.
11. The Authority also acknowledged that it did not respond to the Applicant's requirement for review within the timescale set down by the legislation; a failure it attributed to staff absence.
12. 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 Transport Scotland](#)¹, 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.
13. 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. The same timescale is laid down by regulation 16(4) of the EIRs.
14. 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.
15. The remainder of section 21 of FOISA and regulation 16 of the EIRs set out the requirements to be followed by a Scottish public authority in carrying out a review.
16. The Authority responded to the Applicant's requirement for review on 24 October 2025, 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.

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)

¹ <https://www.foi.scot/decision-2182007>

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 requirement for review within the timescale laid down by sections 21(1) of FOISA and regulation 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.

Cal Richardson
Deputy Head of Enforcement

20 January 2026