



Scottish Information
Commissioner
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Decision Notice 306/2025

Planning application – failure to respond

Applicant: The Applicant

Authority: Highland Council

Case Ref: 202501738

Summary

The Applicant asked the Authority for information about a planning application. This decision finds that the Authority failed to respond to Applicant's request and 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 21 July 2025.
2. On 20 August 2025, the Authority notified the Applicant that it was relying on regulation 7(1) of the EIRs to extend the time allowed for complying with the request for up to 20 additional working days.
3. On 29 August 2025, the Applicant wrote to the Authority requiring a review of its decision to apply regulation 7(1) of the EIRs.
4. The Applicant did not receive a response to his requirement for review.
5. On 1 October 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.
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 8 October 2025.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority explained that the extension notification would have been agreed at a meeting to discuss outstanding and complex requests. It said that it fell into the mistake of requesting that the extension notification be issued as it was unlikely that it would make the response deadline, due to the complexity of what had been requested and the number of other cases that it was dealing with.
10. The Authority advised that for the first time this year it now had a full complement of staff, which was enabling it to catch up with some older cases and to keep on top of compliance.
11. 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 Scotland¹, 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.
12. Regulation 7(1) of the EIRs states that the period of 20 working days to respond to a request for environmental information as set out under the EIRs may be extended by another 20 working days if the “volume and complexity of the information requested makes it impracticable for the authority” to comply with the request.
13. Regulation 7(2) of the EIRs states that where an authority is relying on the provisions in regulation 7(1), it must notify the applicant of this “as soon as possible” and at any rate no longer than 20 working days after the request was received.
14. In this case, the Authority did not notify the Applicant that it was relying on regulation (7)(1) of the EIRs within the timescale allowed (i.e. by 19 August 2025), nor did it respond to his information request or his requirement for review within the timescales allowed.
15. The Commissioner finds that the Authority failed to comply with the EIRs when it applied regulation 7(1) to extend the deadline for response and that it failed to comply with regulation 7(2) by not notifying the Applicant as soon as possible (and in any event no later than 20 working days after the date of receipt of the request for the information) that it was applying regulation 7(1).
16. 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.

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

17. 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.
18. 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.
19. 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.
20. 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. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 of FOISA and regulation 16 of the EIRs.
21. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise 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) 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. The Commissioner requires the Authority to issue a response, by **30 January 2026**.

The Commissioner also finds that the Authority failed to comply with the EIRs when it applied regulation 7(1) to extend the deadline for response and that it failed to comply with regulation 7(2) by not notifying the Applicant as soon as possible (and in any event no later than 20 working days after the date of receipt of the request for the information) that it was applying regulation 7(1).

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Cal Richardson
Deputy Head of Enforcement

16 December 2025