



Scottish Information
Commissioner
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Decision Notice 084/2026

Planning approval of specified property – failure to respond

Authority: Aberdeenshire Council

Case Ref: 202502045

Summary

The Applicant asked the Authority for information relating to the planning approval of a specified property. This decision finds that the Authority failed to respond to the 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 5 September 2025.
2. On the same day, the Authority acknowledged receipt of the Applicant's information request. However, the Authority did not respond to the request.
3. On 8 October 2025, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 11 November 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 10 February 2026.
8. The Commissioner received submissions from the Authority on 24 February 2026.

Commissioner's analysis and findings

Validity of the request

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 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.
10. Both FOISA and the EIRs provide a statutory right to access recorded information (subject to various qualifications).
11. Section 8(1) of FOISA sets down the basic requirements for a valid request for information in terms of section 1(1). Section 8(1) specifies that a request for information for the purposes of FOISA is one which:
 - a) is made in writing or another permanent form capable of subsequent reference,
 - b) states the name of the applicant and an address for correspondence and
 - c) describes the information requested.
12. There is no equivalent of section 8 of FOISA in the EIRs. However, the Commissioner's [guidance](#)² on "Handling requests for environmental information" states (at paragraphs 3-5) that:

"Where a public authority holds environmental information, it must make it available when requested to do so... The EIRs do not specify what form a request should take. This is different from FOISA, which states that a request for information must be in writing or in another form capable of being used for subsequent reference (section 8). This means that a request in any form (verbal, written or recorded) will be a valid request under the EIRs".
13. The Commissioner has carefully considered the terms of the Applicant's request of 5 September 2025. It is an email, signed off with the Applicant's full name, which described the information requested.
14. In the circumstances, the Commissioner is satisfied that the Applicant's request of 5 September 2025 meets the requirements of section 8(1) of FOISA. He is also satisfied that, to the extent that it sought environmental information, the request is a valid request for information under the EIRs.

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

² <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsHandling.pdf>

15. The Commissioner acknowledges the Authority's position that the Applicant's request was invalid on the basis that it did not comprise a new request but instead formed a continuation of an earlier unresolved request of 12 August 2025.
16. The Commissioner understands from the terms of the Applicant's request of 5 September 2025 that it sought information relating to the planning approval of a specified property. On a plain reading of the Applicant's request of 5 September 2025, it is clear to the Commissioner that it is broader in scope – and appears capable of capturing different information – than his earlier request of 12 August 2025 (which related primarily to correspondence).
17. In any event, whatever similarities exist between these requests are not relevant to whether the request being considered in this decision notice constitutes a valid request under FOISA or the EIRs. Provisions exist within FOISA and the EIRs which can be used, where appropriate and provided their particular requirements can be met, to deal with requests which are repeated or which public authorities consider have already been fully addressed.
18. The Commissioner also acknowledges the Authority's submissions regarding the nature and volume of the Applicant's correspondence. He accepts that this has made it challenging for the Authority to identify when the Applicant has made a valid request under FOISA or the EIRs. However, these factors are not relevant to whether a valid request under FOISA or the EIRs has actually been made.
19. That said, the Commissioner would strongly encourage the Applicant to consider the guidance set out in his [Tips for Requesters](#)³. Requesters are not required to state that they are making an FOI request, but doing so can help ensure requests are identified and dealt with appropriately. Similarly, keeping FOI requests separate from other correspondence and focused on the actual information requested can help ensure that they are not overlooked.

Validity of the requirement for review

20. Section 20(1) of FOISA provides that a person who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information may require it to review its actions and decisions in relation to that request.
21. Section 20(3) of FOISA provides that a requirement for review must be in writing or some other form of permanency, it must state the name of the applicant and an address for correspondence, and it must specify the request for information to which the requirement for review relates and the matter which gives rise to the applicant's dissatisfaction.
22. Regulation 16 of the EIRs provides that a person who is dissatisfied with the way in which an authority has not complied with any requirement of the EIRs in relation to their request may require it to review its actions and decisions in relation to that request.
23. While regulation 16 of the EIRs requires the requirement for review to be made in writing, it does not otherwise contain the same requirements in section 20(3) of FOISA for a requirement for review under FOISA.
24. The Authority stated that the Applicant's requirement for review had been submitted to "individual officers within [the Authority] as part of wider correspondence". It said that it was not identified as a valid requirement for review, nor forwarded to the Authority's central FOI team. Had the requirement for review been forwarded to its central FOI team, the Authority

³ https://www.foi.scot/sites/default/files/2022-03/Tips_for_Requesters.pdf

suggested that this may have prompted further consideration of the handling of the Applicant's request at that stage.

25. In summary, the Authority explained that it had reasonably understood the Applicant's request of 5 September 2025 to be part of an ongoing exchange rather than a new request under FOISA or the EIRs and that no valid requirement for review had been received by its central FOI team. As such, the Authority did not accept that it had failed to comply with its statutory obligations in this case.
26. The Commissioner has carefully considered the terms of the Applicant's requirement for review. It is an email, signed off with the Applicant's full name, which expressed clear dissatisfaction with the Authority's failure to respond to his request of 5 September 2025.
27. In the circumstances, the Commissioner is therefore satisfied that the Applicant's requirement for review meets the requirements set out in section 20(3) of FOISA. To the extent that the request sought environmental information, he is also satisfied that the Applicant's requirement for review is valid under the EIRs.
28. The Commissioner would draw the Authority's attention to paragraph 10.1.1 of Part 2 of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs (the [Section 60 Code](#)⁴), which states that:

"A request for review is made to an authority, not an individual officer, and requesters will not generally be restricted to using the route set out in any response letter. It is therefore important that all staff in the authority can recognise a request for review and ensure that it receives an appropriate response."
29. The Commissioner cannot accept that the Applicant's requirement for review was rendered invalid by not being made to the Authority's central FOI team. However, he would strongly encourage requesters to make requests and requirement for reviews to the public authority's designated FOI contact to ensure that they are handled appropriately.

Handling of the request and the requirement for review

30. As stated above, the Commissioner is satisfied that both the Applicant's request of 5 September 2025 and his requirement for review of 8 October 2025 were valid under FOISA and, to the extent that his request sought environmental information, under the EIRs.
31. 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.
32. It is therefore 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.
33. 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.

⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2026/03/foi-eir-section-60-code-practice/documents/foi-eir-section-60-code-practice/foi-eir-section-60-code-practice/govscot%3Adocument/foi-eir-section-60-code-practice.pdf>

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.

34. It is therefore 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.
35. 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/regulation 16 of the EIRs.

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 to the Applicant's requirement for review, by **15 June 2026**.

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

29 April 2026