



Scottish Information
Commissioner
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Decision Notice 106/2026

Bus shelters – failure to respond

Applicant: Anonymous

Authority: Orkney Islands Council

Case Ref: 202502117

Summary

The Applicant asked the Authority for information relating to the inspection and cleaning of bus shelters in Orkney. This decision finds that the Authority failed to respond to the request and requirement for review within the timescale 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 22 September 2025.
2. On the same day, the Authority acknowledged receipt of the Applicant's information request. However, it did not respond to the information request.
3. On 24 October 2025, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. Although the Authority acknowledged the requirement for review, the Applicant did not receive a response to his requirement for review.
5. On 22 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 25 November 2025.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority acknowledged that it had failed to respond to the Applicant's request for information and requirement for review within the statutory timescales.
10. The Authority explained that it had progressed a response to the Applicant's request, and that its response had, in fact, been available for issue on the same day the Applicant's requirement for review was received (i.e. 24 October 2025), but that this response had not been issued until 1 December 2025.
11. The Authority stated that this response would have comprised its response to the Applicant's requirement for review, and submitted that its failure to go on to issue this within statutory timescales – which it considered “should have been fairly straightforward” – had been due to a specific staffing issue within its Governance team, and workload pressures on its Governance Service more generally.
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 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.
14. It is a matter of fact that the Authority did not provide a response to the Applicant's initial 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.
15. 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.
16. 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.
17. The Authority responded to the Applicant's requirement for review on 1 December 2025, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

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

18. The Commissioner notes the Authority's comments on the pressures it was experiencing at the time it received the Applicant's requirement for review. He would remind authorities that under paragraph 1.1.1 of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 ([the Section 60 Code](#)²), FOI should be recognised as a specific statutory corporate function within an authority. As such, it should receive the necessary levels of organisational support at both strategic and operational levels, as well as sufficient resource, to ensure compliance with Scotland's access to information regimes.
19. 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) 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.

Nick Murton
Freedom of Information Officer

13 May 2026

² <https://www.gov.scot/publications/foi-eir-section-60-code-practice/>