



Scottish Information
Commissioner
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Decision Notice 108/2026

Management, inspection and maintenance of B707 – failure to respond

Applicant: Anonymous

Authority: North Ayrshire Council

Case Ref: 202600007

Summary

The Applicant asked the Authority for information about the management, inspection, maintenance, supervision or works carried out on or near a specific section of the B707 over a particular timescale. This decision finds that the Authority failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Authority failed to seek clarification from the Applicant as soon as was reasonably possible.

Background

1. The Applicant made an information request to the Authority on 3 November 2025.
2. The Authority sought clarification from the Applicant on 17 November 2025. The Applicant provided the requested clarification on the same date.
3. The Authority did not subsequently respond to the information request.
4. On 16 December, the Applicant wrote to the Authority in respect of its failure to respond.
5. The Applicant received a response to his requirement for review on 24 December 2025.
6. The Applicant wrote to the Commissioner on 24 December 2025, 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 9 February 2026.
9. The Commissioner received submissions from the Authority. These submissions are considered below.
10. The Authority submitted that following receipt of the request, it was issued to the service it initially believed held the information on 4 November 2025. There was delay before that service advised, on 17 November 2025, that the request should be redirected to an additional service and clarification was required. The Authority noted that clarification was received the same day.
11. The Authority explained that by the time the request reached the correct service they required further assistance in preparing a response, including consideration of possible exceptions. The Authority remarked that the additional consideration resulted in delays which then meant the service did not have adequate time to finalise and return the necessary information ahead of the statutory deadline. Disclosure of the review response taking place on 24 December 2025, rather than 15 December 2025.
12. The Authority offered in their submissions, their apologies to the requester and to the Commissioner for the delays which occurred in this case.
13. 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.
14. 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.
15. 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.
16. 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.

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

17. The remainder of section 21 and regulation 16 set out the requirements to be followed by a Scottish public authority in carrying out a review.
18. The Authority responded to the Applicant's requirement for review on 24 December 2025, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
19. The Commissioner would ask the Authority to reflect on its practices as far as seeking additional clarification from Applicants when deemed necessary. As stated in the relevant [Code of Practice](#), an Authority seeking clarification should promptly ask the requester to clarify what information [is sought](#). This should be done as soon as the requirement is identified, and any advice and assistance should be provided as soon as reasonably [possible](#).

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 within the timescale laid down by section 10(1) and 21(1) of FOISA and regulation 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.

Jill Walker
Deputy Head of Enforcement

13 May 2026