



Scottish Information  
Commissioner  
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# Decision Notice 215/2026

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## Use of property at a named location

Authority: British Waterways Board

Case Ref: 202600804

### Summary

The Applicant asked the Authority for information about use of property at a specified location. 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). The decision also finds that the Authority failed to provide the Applicant with information about his right of appeal in accordance with the requirements of FOISA.

### Background

1. On 30 January 2026, the Applicant made an information request to the Authority. He asked for specific information regarding the use of the Scottish Canals office at 23 Lower Gilmore Place, Edinburgh. A copy of the Applicant's request is provided in Appendix 1.
2. The Authority did not respond to the information request within the statutory timescale of 20 working days.
3. On 2 March 2026, the Applicant wrote to the Authority in respect of its failure to respond.
4. Later that same day, on 2 March 2026, the Authority responded to the Applicant's requirement for review.
5. The Applicant made a subsequent requirement for review regarding the substance of the Authority's review on 2 March 2026 and there followed additional correspondence between the parties in relation to this, including a formal complaint.

6. On 30 April 2026, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to provide a lawful review outcome, applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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 27 May 2026.
9. The Commissioner received submissions from both parties. These submissions are considered below.

### *The Applicant's comments*

10. The Applicant was dissatisfied with the adequacy and lawfulness of the Authority's review outcome issued on 2 March 2026. He argued that it did not meet the requirements of section 21 of FOISA because he considered
  - (i) it did not address the wording of his request,
  - (ii) it was based on the review of a different request
  - (iii) it did not provide a fresh decision, and
  - (iv) it did not consider the statutory questions he had asked.

He asked the Commissioner to consider the adequacy of the review outcome.

### *The Authority's comments*

11. The Authority acknowledged that it had not responded to the Applicant's information request within the statutory timescales.
12. The Authority recognised that its correspondence with the Applicant on 2 March 2026, which it had considered to be an initial response was, technically, in law, a review outcome given that it was issued subsequent to the receipt of the Applicant's requirement for review. The Authority acknowledged that it given a late response rather than carrying out a review. The Authority apologised for the inconvenience caused by this error and commented that it had taken steps to ensure that relevant staff are aware of the requirements of section 10 and section 21 of FOISA. It provided the Commissioner with details of the steps it had taken.

### *The Commissioner's view*

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.
14. 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 in this respect.

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.
16. The Commissioner has considered wording of the Applicant's request and the content of the review issued on 2 March 2026. The Commissioner notes that the Authority has quoted the text of each part of the request, verbatim, and then given its response to each part. The Commissioner is, therefore, not satisfied that there is any basis for the Applicant's specific concern that the review did not address the wording of his request.
17. The Commissioner has also considered whether the review provided a fresh decision. He notes that the review was issued following the Authority's initial failure to respond to the request and, in issuing the review, the Authority did in fact respond to the request. The Commissioner is satisfied that this meets the requirements of section 21(4) of FOISA in that, following the requirement for review, the Authority reached a decision, where the complaint was that no decision had been reached.
18. The Commissioner notes that the email provided to the Applicant by the Authority on 2 March 2026, following the Applicant's request for review earlier that same day, was intended as a response to the Applicant's original request for information, rather than a response to the Applicant's requirement for review. The Authority has acknowledged that it simply issued the Applicant with the late response it had been collating on 2 March 2026, rather than carrying out a review of its failure to respond, as requested by the Applicant.
19. For the reasons set out above, the Commissioner is satisfied that the Authority's response, issued on 2 March 2026, was a review outcome as set out in section 21 of FOISA. Given this, the Applicant should have been advised (in the 2 March 2026 correspondence) that his next step, should he remain dissatisfied with the review outcome, was to appeal to the Commissioner.
20. The Commissioner finds that the Authority failed to comply with section 21(10) of FOISA, which requires the Authority, in its review notice, to include information about the right to appeal to the Commissioner and to the Court of Session.
21. The Commissioner would note that there is no provision under FOISA to provide a second review outcome, unless the Commissioner requires an authority to carry out a new review and issue a revised review outcome in a decision notice.
22. As the Authority has provided the Applicant with a review outcome, and as it has made adjustments to its internal processes as a result of its errors in this case, he does not require it to take any further action in relation to the Applicant's application.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) 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 timescales laid down by section 10(1) of FOISA and it failed to provide the Applicant with information about his right of appeal as required by section 21(10) of FOISA.

The Commissioner does not require the Authority to take any action in relation to these failings.

## **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.

**Jennifer Ross**  
**Deputy Head of Enforcement**

**26 August 2026**

## Appendix 1: The Request

As FCCT is using this office and under the Community Empowerment (Scotland) Act 2015 Scottish Canals are required to have completed a formal evaluation. Which is mandatory.

Therefore, this FOI is to request the following.

Dear freedom of information Officer,

Under the freedom of information act 2002, I would like to request the following recorded information regarding the use of the Scottish Canals office at 23 Lower Gilmore Place, Edinburgh, by the FCCT.

1. **Management /Lease Agreement:** A copy of the current lease, or licence, or management agreement in place between Scottish Canals and FCCT for the use of the office at 23 Lower Gilmore Place.
2. **Assessment Records:** Copies of any best value assessments, Decision Notices, or formal evaluations carried out by Scottish Canals to justify the use of this asset by a third party at less than market value.
3. **Financial Arrangement:** Documentation confirming who is responsible for the payment of utilities (specifically heating, lighting and water) for this building. If these costs are waived or covered by Scottish Canals, please provide the recorded reason for this.
4. **Service Level Agreement (SLA):** If the building is provided in exchange for services or duties performed by the charity, please provide a copy of the SLA or document detailing the nature and valuation of these services.

I understand that under the FOISA, I am entitled to a response within 20 working days. I would like to receive this information in electronic format.