Scottish Information Commissioner
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Decision Notice 251/2026

Residential Housing Stock Electrical Safety Compliance – failure to respond

Applicant: Anonymous
Authority: Midlothian Council
Case Ref: 202600992

Summary

The Applicant asked the Authority for information concerning the Authority's residential housing stock. The decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA and the EIRs.

Background

1. The Applicant made an information request to the Authority on 30 March 2026.
2. The Authority responded to the information request on 16 April 2026.
3. On 16 April 2026, the Applicant wrote to the Authority requiring a review of its response.
4. The Applicant did not receive a response to his requirement for review.
5. On 29 May 2026, 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.
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 30 July 2026.

8. The Commissioner received submissions from the Authority. These submissions are considered below.

9. The Authority remarked that a continued delay in receiving information from the relevant Authority internal department was the cause for the absence of a review response being issued to the Applicant. While the Authority stated that it had since been impressed upon the relevant internal staff members the importance of this situation, no review response has yet been issued

10. It is apparent from the terms of the request that at least some of the information caught by it may 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.

11. 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.

12. 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.

13. 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.

14. 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. 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 and regulation 16.

15. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

16. The submissions received from the Authority are of concern to the Commissioner. If a public authority cannot rely on their own internal departments to respect and action statutory timescales in providing information and comment on requests and requests for reviews, the public's right to access information will be greatly diminished and endangered. The Commissioner reminds the Authority of its statutory obligations under both FOISA and the EIRs, in particular in relation to compliance with timescales. The Commissioner anticipates the importance of meeting statutory timescales under the applicable information rights regimes to be reiterated by the Authority's leadership to all teams and staff members concerned in this matter.

[1] https://www.foi.scot/decision-2182007

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 requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs. The Commissioner requires the Authority to issue a review response to the Applicant by 15 November 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.

Jill Walker
Deputy Head of Enforcement

1 October 2026