Scottish Information Commissioner
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Decision Notice 262/2026

Decision-making in relation to secondary school provision for particular communities – failure to respond

Applicant: The Applicant
Authority: West Lothian Council
Case Ref: 202601370

Summary

The Applicant asked the Authority for information about the Authority's planning, modelling and decision-making in relation to secondary school provision for the communities of East Calder, Calderwood, Mid Calder and Wilkieston. This decision finds that the Authority failed to respond to the Applicant's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 4 March 2026.
2. The Authority responded to the information request on 1 April 2026.
3. On 1 April 2026, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 28 July 2026, 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 26 August 2026.

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

9. The Authority acknowledged that it had received the Applicant's requirement for review and failed to respond to it. It confirmed that it would issue a response to the Applicant's requirement for review.

10. 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. This is subject to qualifications which are not relevant in this case.

11. 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.

12. The remainder of section 21 sets 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.

13. The Authority responded to the Applicant's requirement for review in part on 16 September 2026, providing further information on 28 September 2026. After further questions from the Applicant, the Authority provided him with a further response on 2 October 2026.

14. The Commissioner is satisfied that the Authority has now responded to the Applicant's requirement for review. As such, he does not require the Authority to take any further action in relation to the Applicant's application.

15. The Commissioner notes that the Authority has apologised to the Applicant for its failure to respond to his requirement for review within the statutory timescale.

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 requirement for review within the timescale laid down by section 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, the Commissioner 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.

Cal Richardson
Deputy Head of Enforcement

28 October 2026