Scottish Information Commissioner
www.foi.scot

Decision Notice 282/2026

Scotland's Climate Assembly – failure to respond

Authority: Scottish Ministers
Case Ref: 202601846

Summary

The Applicant asked the Authority for various information relating to the recruitment and selection of members of Scotland's 2020-2021 Climate Assembly. This decision finds that the Authority failed to comply with 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 August 2026.
2. The Authority responded to the information request on 1 September 2026.
3. Later the same day, the Applicant wrote to the Authority requiring a review of its decision.
4. On 29 September 2026 (the date by which the Authority was required to respond to the Applicant's requirement for review), the Authority informed the Applicant that its response would be delayed and apologised for this.
5. The Applicant did not subsequently receive a response to his requirement for review.
6. On 13 October 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.
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 20 October 2026.

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

10. The Authority recognised that it had failed to respond to the Applicant's requirement for review within the statutory timescale and apologised for this. It explained that this failure had been the result of resourcing pressures within the relevant policy area and confirmed that it would issue a response to the Applicant's requirement for review.

11. The Authority subsequently responded to the Applicant's requirement for review on 14 November 2026.

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

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.

14. As noted above, the Authority responded to the Applicant's requirement for review on 14 November 2026, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

15. The Commissioner would remind Scottish public authorities that 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[1]) expects them to be adequately resourced to support and deliver their FOI duties (paragraph 1.1.4 in Part 2).

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, he does not require the Authority to take any action.

[1] https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2026/03/foi-eir-section-60-code-practice/documents/foi-eir-section-60-code-practice/foi-eir-section-60-code-practice/govscot%3Adocument/foi-eir-section-60-code-practice.pdf

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

17 November 2026