



Scottish Information  
Commissioner  
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# Decision Notice 016/2025

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## Damp and mould policy – failure to respond

Applicant: The Applicant

Authority: Sanctuary Scotland Housing Association Ltd

Case Ref: 202401240

### Summary

The Applicant asked the Authority for information about a damp and mould policy. This decision finds that the Authority failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

### Background

1. The Applicant made an information request to the Authority on 28 June 2024.
2. The Authority responded to the information request on 5 July 2024, but did not do so in terms of FOISA or the EIRs.
3. On 6 August 2024, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. On 15 September 2024, the Applicant wrote to the Commissioner, stating that she 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.
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 29 October 2024.
8. The Commissioner received submissions from the Authority on 1 November 2024. These submissions are considered below.
9. The Authority accepted that it failed to respond to the requirement for review within the timescale allowed under FOISA and the EIRs.
10. The Authority also explained that, while it had provided an initial response to the information request, it had not handled it as a request for information under FOISA or the EIRs. However, the Authority noted that in response to the request it had posted a copy of the damp and mould policy to the Applicant (and, when it discovered she had not received it, hand-delivered a copy to her address).
11. The Authority confirmed that it would arrange staff training to ensure that future information requests are recognised and processed in accordance with FOI law.
12. 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](#)<sup>1</sup>, 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.
13. 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. The same timescale is laid down by regulation 16(4) of the EIRs.
14. 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.
15. 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.
16. The Authority responded to the Applicant's requirement for review on 1 November 2024 (as part of which it attached a digital copy of the damp and mould policy), so the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the Authority apologised to the Applicant for its failure to comply.

## 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. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

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

## **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**

**24 January 2025**