



Scottish Information
Commissioner
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Decision Notice 068/2025

Development at House of Rosskeen – failure to respond

Applicant: The Applicant
Authority: Highland Council
Case Ref: 202500253

Summary

The Applicant asked the Authority for information about a development at House of Rosskeen, Invergordon. This decision finds that the Authority failed to respond to the Applicant's request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

1. On 12 November 2024, the Applicant made an information request to the Authority.
2. The Authority did not respond to the information request.
3. On 15 January 2025, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to her requirement for review.
5. On 13 February 2025, 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 14 February 2025.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority acknowledged that it failed to comply with the legislative timescales. It explained that the Applicant's request had involved the collation of a lot of information, which was not done correctly initially (and failed to address specific questions in the request) and therefore had to be done again, which led to the delays in responding.
10. 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 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. 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 and regulation 5(2)(a) of the 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. 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.
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 26 February 2025, so the Commissioner does not require it to take any further action in relation to the Applicant's application of 13 February 2025 to the Commissioner. The Commissioner notes that the Authority's review of 26 February 2025 apologised to the Applicant for its delay in responding.

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 request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs. Given that the

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

Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action in respect of these failures.

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.

Colin Macfadyen
Freedom of Information Officer

21 March 2025