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Commissioner  
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# Decision Notice 072/2025

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## Mains of Dyce and Cordyce sites – failure to respond

Applicant: The Applicant

Authority: Aberdeen City Council

Case Ref: 202401353

### Summary

The Applicant asked the Authority for information about sites at Mains of Dyce and Cordyce for the period June 2020 to June 2024. 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. The Applicant made an information request to the Authority on 5 June 2024.
2. On 12 June 2024, the Authority asked the Applicant for clarification of his request and the Applicant provided this on 16 June 2024.
3. On 23 July 2024, the Authority notified the Applicant that it was relying on Regulation 7(1) of the EIRs to extend the time allowed for complying with the request, advising that a response would be issued by 9 August 2024.
4. The Authority did not respond to the Applicant's information request.
5. On 8 September 2024, the Applicant wrote to the Authority and asked it to review its failure to respond to his request.
6. The Applicant did not receive a response to his requirement for review.

7. On 8 October 2024, 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. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
8. 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

9. 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 October 2024.
10. The Commissioner received submissions from the Authority on 13 November 2024. These submissions are considered below.
11. The Authority accepted that it had failed to respond to the Applicant's request and requirement for review within the timescales allowed by FOISA and the EIRs.
12. The Authority stated that the request was passed to its Corporate Landlord team to source the information due to an influx of requests for information of the nature requested by the Applicant. It explained it was working on ways to either proactively publish datasets or produce an easier and consistent way of reporting such information.
13. 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](#)<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.
14. Regulation 7(1) of the EIRs states that the period of 20 working days to respond to a request for environmental information as set out under the EIRs may be extended by another 20 working days if the "volume and complexity of the information requested makes it impracticable for the authority" to comply with the request.
15. Regulation 7(2) of the EIRs states that where an authority is relying on the provisions in regulation 7(1), it must notify the applicant of this "as soon as possible" and at any rate no longer than 20 working days after the request was received.
16. In this case, the Authority did not notify the Applicant that it was relying on Regulation (7)(1) of the EIRs within the timescale allowed i.e. by 12 July 2024 and it did not respond to the information request by 9 August 2024.
17. The Commissioner finds that the Authority failed to comply with the EIRs when it applied regulation 7(1) to extend the deadline for response and that it failed to comply with regulation 7(2) by not notifying the Applicant as soon as possible that it was applying regulation 7(1).
18. 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.

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

19. 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.
20. 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.
21. 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.
22. The remainder of section 21 and regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
23. The Authority responded to the Applicant's requirement for review on 29 November 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
24. The Commissioner notes that the Authority has apologised to the Applicant for its handling of his request.

## **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.

The Commissioner also finds that the Authority failed to comply with the EIRs when it applied regulation 7(1) to extend the deadline for response and that it failed to comply with regulation 7(2) by not notifying the Applicant as soon as possible that it was applying regulation 7(1).

Given that the Authority has now responded to the Applicant's requirement for review, he 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.

**Jennifer Ross**  
**Deputy Head of Enforcement**

**21 March 2025**