

# Decision Notice 021/2021

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## Information relating to a planning application – failure to respond

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### The Applicants

**Public authority: Falkirk Council**

Case Ref: 202001364



Scottish Information  
Commissioner

## Summary

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The Applicants asked Falkirk Council (the Council) for information related to a planning application. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with the Applicants' requirement for review within the timescale set down by FOISA and the EIRs.

The Commissioner has ordered the Council to comply with the requirement for review.

## Background

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1. The Applicants made an information request to the Council on 11 August 2020.
2. The Council did not respond to the information request.
3. On 2 October 2020, the Applicants wrote to the Council requiring a review respect of its failure to respond.
4. The Applicants did not receive a response to their requirement for review.
5. On 13 November 2020, the Applicants wrote to the Commissioner, stating that they were dissatisfied with the Council's failures 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. On 10 December 2020, the Council was notified in writing that an application had been received from the Applicants and was invited to comment on the application.
7. The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

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8. 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 Professor A D Hawkins and 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.
9. In its submissions, the Council explained that the Applicants' letter of 11 August 2020 was not interpreted by the planning team as including requests for information. The letter was logged as a complaint on the basis that it asked for "explanations" and "justifications" rather than requesting recorded information.
10. Similarly, the Council submitted that the correspondence of 2 October 2020 was not identified as a requirement for review, but rather a stage 2 complaint.
11. However, the Council acknowledged that, on reflection, part of the correspondence could be considered a request for information.

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

12. Section 8(1) of FOISA sets down the basic requirements for a valid request for information in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested. Although acknowledging that these requests form part of a wider complaint, the Commissioner is satisfied that it also contains requests for information that satisfies the requirements as set out in section 8. The Commissioner highlighted the requests to the Council during the investigation.
13. 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.
14. It is a matter of fact that the Council did not provide a response to the Applicants' 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.
15. 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.
16. It is a matter of fact that the Council did not provide a response to the Applicants' 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.
17. 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. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 and regulation 16.

## Decision

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The Commissioner finds that Falkirk Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations (the EIRs) in dealing with the information request made by the Applicants. In particular, the Council failed to respond to the Applicants' request for information and requirement for review within the timescales laid down by sections 10(1) of 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to issue a review, by **29 March 2021**.

## Appeal

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Should either the Applicants or the Council 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.

## **Enforcement**

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If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Claire Stephen**  
**Deputy Head of Enforcement**

**11 February 2021**

**Scottish Information Commissioner**

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