



# Decision Notice 052/2023

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## Soil Treatment Systems Ltd – failure to respond

**Applicant: The Applicant**

**Authority: Scottish Environment Protection Agency**

**Case Ref: 202300458**

### Summary

The Applicant asked the Authority for all records relating to Soil Treatment Systems Ltd from 1 January 2017 to date. This decision finds that the Authority failed to respond to the information request and 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 29 July 2022.
2. The Authority did not respond to the information request, but updated the Applicant on 31 August 2022 with an apology that there would be a delay in responding to the request.
3. The Authority then asked the Applicant for clarification of the request on 17 October 2022, which the Applicant responded to the next day.
4. On 24 October 2022, the Authority invited the Applicant to narrow the scope of the request due the large volume of data asked for. The Applicant did not narrow the request, but replied on 22 and 28 November 2023, suggesting alternative ways of sending the data.
5. On 10 January 2023, the Applicant wrote to the Authority, requiring a review in respect of its failure to respond.
6. The Applicant did not receive a response to their requirement for review, but received an acknowledgement from the Authority on 10 January 2023 with a response time of not later than 7 February 2023.

7. The Applicant wrote to the Commissioner on 12 April 2023, stating that it 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 25 April 2023.
10. The Commissioner received submissions from the Authority on 11 May 2023. These submissions are considered below.
11. 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.
12. The Authority acknowledged that it had not responded to the Applicants' information request and requirement for review on time.
13. It explained the factors that had contributed to this failure related to resource issues, in particular, the restrictions caused by Covid-19 and the impact of the cyber-attack against the Authority on 24 December 2020.
14. The Authority also explained that further delays were caused by confusion regarding the company name (later clarified by the Applicant) and the broad scope of the request.
15. 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.
16. It is a matter of fact that the Authority 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.
17. 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.

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<sup>1</sup> <https://www.itspublicknowledge.info/decision-2182007>

18. It is a matter of fact that the Authority 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.
19. 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. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 and regulation 16.
20. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply. He would also note that, while there may be good reasons in a particular case for asking an applicant to narrow the scope of their request, and while there may be particular routes open to a Scottish public authority (under FOISA and/or the EIRs) if the scope is not narrowed, the authority cannot use the breadth of a request as an excuse for simply failing to respond or delaying that response without limit.

## **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 requires the Authority to issue a response, by **10 July 2023**.

## **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.

## **Enforcement**

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

**Euan McCulloch**  
**Deputy Head of Enforcement**

**26 May 2023**