



# Decision Notice 059/2023

---

## Academy Street Proposal – Next Steps – failure to respond

**Applicant: The Applicant**

**Authority: Highland Council**

**Case Ref: 202300593**

### Summary

The Applicant asked the Authority for information about a consultation exercise on proposed design changes to Academy Street in Inverness, relating to the widening of the pavement, increasing space for pedestrians and to agree an alternative cycle route. The Applicant asked for information on the consultation process and the background to the decision to proceed with “Option B”, the proposal for a different design.

This decision finds that the Authority 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 Authority failed to comply with the Applicant’s requirement for review within the timescale set down by FOISA and the EIRs.

### Background

1. The Applicant made an information request to the Authority on 29 December 2022.
2. Due to the complexity of the information, the Authority notified the Applicant, on 10 February 2023, that it was relying on regulation 7(1) of the EIRs to extend the timescale for a response by an additional 20 working days.
3. The Authority did not respond to the information request.
4. On 31 March 2023, the Applicant wrote to the Authority in respect of its failure to respond.
5. The Applicant did not receive a response to their requirement for review.

6. The Applicant wrote to the Commissioner on 11 May 2023, stating that they were 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.
7. 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

8. 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 17 May 2023.
9. The Commissioner received submissions from the Authority on 2 June 2023. These submissions are considered below.
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](#)<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.
11. The Authority accepted that it had not responded to the Applicant within the timescale allowed in FOISA and the EIRs.
12. The Authority explained that a number of issues contributed to its compliance with this request. It noted that it had discovered around 10,000 files when searching for information and that it had not been possible to identify which staff should deal with the request, given the volume of the information and the time required to review it.
13. The Authority further explained that it was now working with its IT Team to test the use of the "E.discovery" functionality with Office 365, given the number of "false positives" coming up in searches. It commented that the work had led to a reduced number of "false positives", but that there was still a lot of work to do with the remaining thousands of documents to review and redact. The authority confirmed that it would contact the Applicant to explain these issues, and see if the Applicant would consider reducing the scope of the request to reduce the volume of documents.
14. 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 (although, where the EIRs apply, the authority may – as the Authority did in this case – extend the timescale for response if the volume and complexity of the information requested make it impracticable for the authority to comply with the request or make a decision on its refusal (regulation 7(1) of the EIRs).
15. 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

---

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

section 10(1) of FOISA. Neither did it provide a response within the extended period provided for in regulation 7(1) of the EIRs and so comply with regulation 5(2)(a) of the EIRs, read with regulation 7(1).

16. 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.
17. 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.
18. 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.
19. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise 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 Applicants' 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)(a) (read with regulation 7(1)) and 16(4) of the EIRs. The Commissioner requires the Authority to respond to the Applicant's requirement for review, by **24 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**

**7 June 2023**