



# Decision Notice 115/2024

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## Paper relating to a safe consumption facility – failure to respond

**Applicant: The Applicant**

**Authority: Chief Constable of the Police Service of Scotland**

**Case Ref: 202400577**

### Summary

The Applicant asked the Authority for the paper from the Authority to the Crown Office and Procurator Fiscal Service as part of Glasgow Health and Social Care Partnership's proposal for a safe consumption facility. This decision finds that the Authority failed to respond to the request and the requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

### Background

1. The Applicant made an information request to the Authority on 29 August 2023.
2. The Authority responded to the information request on 26 October 2023.
3. On 26 October 2023, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. 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.
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 8 February 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority acknowledged that it failed to respond to the Applicant's request and requirement for review within FOISA timescales. It explained that the delay was attributable to the increased number of information requests; a 19% increase in volume in 2023 compared to 2022.
10. 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.
11. 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.
12. 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.
13. 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.
14. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
15. The Authority responded to the Applicant's requirement for review on 12 March 2024, and apologised for its failure to respond to the Applicant's request and requirement for review within FOISA timescales, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) 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. 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.

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.

**Cal Richardson**  
**Deputy Head of Enforcement**

**30 May 2024**