



# Decision Notice 187/2024

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## Approval process – failure to respond

**Applicant: The Applicant**

**Authority: Clackmannanshire Council**

**Case Ref: 202400961**

### Summary

The Applicants asked the Authority for various pieces of information regarding the approval process for a proposed development at a specified private home address. 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 Applicants made an information request to the Authority on 13 May 2024.
2. The Authority did not respond to the information request.
3. On 17 June 2024, the Applicants wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicants did not receive a response to their requirement for review, but the Authority issued an acknowledgement on 18 June 2024.
5. The Applicants wrote to the Commissioner on 17 July 2024, 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.
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 13 August 2024.
8. The Commissioner received submissions from the Authority on 26 August 2024. These submissions are considered below.
9. 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.
10. The Authority accepted that it had failed to respond to the Applicants' request and requirement for review within the timescales allowed under FOISA and the EIRs.
11. The Authority explained that there were various reasons why it had failed to respond to the Applicants. These were due to resources being diverted to deal with the General Election, staff annual leave and staff leaving the organisation.
12. 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.
13. 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.
14. 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.
15. 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.
16. The Authority responded to the Applicants' requirement for review on 22 August 2024, so the Commissioner does not require it to take any further action in relation to the Applicants' application.
17. The Commissioner notes that the Authority apologised to the Applicants for its failure to comply.

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

## **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 Applicants. 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) and 16(4) of the EIRs. Given that the Authority has now responded to the Applicants' requirement for review, he does not require the Authority to take any action.

## **Appeal**

Should either the Applicants 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**  
**(Acting) Deputy Head of Enforcement**

**02 September 2024**