

# Decision Notice

---

**Decision 098/2018: William Munro Construction (Highland) Limited and Highland Council**

---

**Waste management contract: failure to respond within statutory timescales**

Reference No: 201800751  
Decision Date: 29 June 2018



Scottish Information  
Commissioner

## Summary

On 1 February 2018, William Munro Construction (Highland) Limited (WMC) asked Highland Council (the Council) for information about a waste management contract. This decision finds that the Council failed to respond to the request within the timescale allowed by the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with WMC's requirement for review within the timescale set down by the EIRs.

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

## Background

Date	Action
1 February 2018	WMC made an information request to the Council.
	The Council did not respond to the information request.
21 March 2018	WMC wrote to the Council, requiring a review in respect of its failure to respond.
	WMC did not receive a response to its requirement for review.
30 April 2018	WMC wrote to the Commissioner's Office, stating that it was dissatisfied with the Council'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 June 2018	The Council was notified in writing that an application had been received from WMC and was invited to comment on the application.
21 June 2018	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

1. 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.
2. 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

---

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

subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.

3. It is a matter of fact, acknowledged by the Council, that the Council did not provide a response to WMC's 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.
4. 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.
5. The Council also acknowledged that it had failed to respond to WMC's requirement for review within the required statutory timescale. It is a matter of fact that the Council did not provide a response to WMC'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.
6. The Council explained that it was engaged in a complex, protracted and highly contentious commercial dispute with WMC. The Council submitted that the dispute related to a wide range of matters and had involved an extremely high volume of correspondence between and among the Council, its external legal advisers, WMC and a number of different external professional advisers to WMC.
7. The Council explained that WMC's information request of 1 February 2018 and its requirement of review of 21 March 2018 were among the very large number of communications from WMC and its various external advisers received by the Council during the period between January and March 2018. As a result of administrative oversight, these were not responded to.
8. The Council offered no suggestion, however, that there should have been any difficulty in identifying the request and requirement for review for what they were. On the face of it, it appears to the Commissioner quite clear what they were. The Council is perfectly aware of its responsibilities when it receives either a request for information or a requirement for review.
9. It is a matter of fact that the Council did not provide a response to WMC'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.
10. The Council stated that it had sent WMC a partial response to its request on 2 May 2018 (after the 20 working days had expired and following WMC's application to the Commissioner). It noted that it had received no response to, or acknowledgement of, that response. The Commissioner would observe that, while it may be helpful on occasion, the applicant is under no obligation to acknowledge or comment on any response it receives from a Scottish public authority, either to an information request or to a requirement for review.
11. In addition, the Council itself acknowledges that this response failed to address all aspects of the request of 1 February. It believes the response "contained sufficient information to allow WMC and its legal advisers to establish whether WMC had a potential claim against the Council...", but such a judgement is of no relevance if the request made by WMC has not actually been met in full. In the circumstances, the Council is under a continuing responsibility to provide WMC with a full response – and the requirements to do so promptly

(under sections 10(1) and 21(1) of FOISA) and as soon as possible (under regulations 5(2)(a) and 16(4) of the EIRs) do not lapse when the corresponding timescales are not met.

12. The Council submitted that it was in the process of undertaking a review and preparing a (further) response to WMC's information request, which would be issued to WMC as soon as possible. The Council apologised for failing to meet the statutory timescales.
13. 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 Council failed to discharge these requirements: he now requires a review to be carried out – and WMC to be notified of the outcome – in accordance with section 21 of FOISA and regulation 16 of the EIRs. While he cannot give the Council less than 42 days to comply with this decision, he would strongly recommend that it abides by its stated intention of doing so as soon as possible – any applicant which has been waiting almost four months for a full response should be entitled to expect that.

## Decision

---

The Commissioner finds that Highland Council (the Council) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by William Munro Construction (Highland) Limited (WMC). In particular, the Council failed to respond to WMC's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of the EIRs and regulations 5(2)(a) and 16(4) of the EIRs.

The Commissioner requires the Council to respond to WMC's request for review by 13 August 2018.

## Appeal

---

Should either WMC 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

---

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.

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

**29 June 2018**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**