

# Decision Notice

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**Decision 103/2018: Mr L and Highland Council**

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**Road information: failure to respond within statutory timescales**

Reference No: 201800780

Decision Date: 9 July 2018



Scottish Information  
Commissioner

## Summary

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The Council was asked for information in relation to a specific road. This decision finds that the Council 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 Council failed to comply with Mr L's requirement for review within the timescale set down by FOISA and the EIRs.

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

## Background

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Date	Action
27 February 2018	Mr L made an information request to Highland Council (the Council).
	The Council did not respond to the information request.
29 March 2018	Mr L wrote to the Council requiring a review of its failure to respond.
	Mr L did not receive a response to his requirement for review.
5 May 2018	Mr L wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures 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.
12 June 2018	The Council was notified in writing that an application had been received from Mr L and was invited to comment on the application.
26 June 2018	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

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1. It is apparent from the terms of the request that at least some of the information caught by it may 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

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<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 that the Council did not provide a response to Mr L'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. It is a matter of fact that the Council did not provide a response to Mr L'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 identified that an administrative error resulted in the failure to respond to Mr L's requests. The Council has apologised for the error. It has confirmed that suitable staff training has been provided to avoid future errors and advised that a review response would be sent to Mr L as soon as possible.
7. The remainder of section 21 of FOISA and regulation 16 of the EIRs set 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 in accordance with section 21 of FOISA and regulation 16 of the EIRs.
8. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr L for its failure to comply.

## Decision

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The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr L. In particular, the Council failed to respond to Mr L's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to provide a review response, by **Thursday 23 August 2018**.

## Appeal

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Should either Mr L or Highland Council (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**

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If Highland Council (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.

**Alison Davies**  
**Deputy Head of Enforcement**

**9 July 2018**

**Scottish Information Commissioner**

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