

# Decision Notice

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**Decision 107/2018: Mr H and Highland Council**

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**Planning Application: failure to respond within statutory timescales**

Reference No: 201800848

Decision Date: 12 July 2018



Scottish Information  
Commissioner

## Summary

Highland Council (the Council) was asked for information on a specific planning application, including details of a felling plan, the narrative on the requirements to protect archaeological areas of the site, the requirements to protect wildlife habitats and copies of the consultation responses from the Council's forestry and archaeological officers.

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 provide a response to the requirement for review as set down by FOISA and the EIRs.

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

## Background

Date	Action
18 February 2018	Mr H made an information request to the Council.
26 March 2018	The Council responded to the information request.
30 March 2018	Mr H wrote to the Council, requiring a review of its decision.
5 April 2018	Although Mr H received an acknowledgement, he did not receive a response to his requirement for review.
20 May 2018	Mr H wrote to the Commissioner's Office, stating that he 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.
25 June 2018	The Council was notified in writing that an application had been received from Mr H and was invited to comment on the application.
10 July 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.

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

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 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 H'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 H'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 Mr H had been informed that the information was publicly accessible in the relevant planning file, available to view in the Council's planning office.
7. The Council acknowledged that it had not complied with the relevant timescales in FOISA and the EIRs. Noting that Mr H explained in his requirement for review that he was unable to visit the office during office hours, the Council commented that it had not reached a conclusion as to whether an alternative option was available for Mr H and no formal review response had been sent to him.
8. The remainder of section 21 and regulation 16 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 and regulation 16.
9. The Council has apologised to the Commissioner for these failures, and the Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr H when it issues a review outcome.

## 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 H.

The Council failed to respond to Mr H's request for information within 20 working days. In doing so, it failed to comply with sections 10(1) and of FOISA and regulation 5(2) of the EIRs.

The Council also failed to respond to Mr H's requirement for review within the timescale laid down by section 21(1) of FOISA and 14(4) of the EIRs.

The Commissioner requires the Council to provide Mr H with a response to his requirement for review, by **Monday 27 August 2018**.

## **Appeal**

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Should either Mr H 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.

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

**12 July 2018**

**Scottish Information Commissioner**

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