

# Decision Notice 196/2021

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## Recording of meeting – failure to respond

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**Applicant: The Applicant**

**Public authority: Midlothian Council**

**Case Ref: 202101022**



Scottish Information  
Commissioner

## Summary

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The Applicant asked Midlothian Council (the Council) for the recording of the Local Review Body (LRB) meeting that took place on 30 March 2021. 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 the Applicant's requirement for review within the timescale set down by FOISA and the EIRs.

## Background

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1. The Applicant made an information request to the Council on 17 May 2021. The Applicant's request for a recording of the LRB meeting formed one of a number of requests within the same correspondence.
2. The Council did not respond to the information request.
3. On 29 June 2021, the Applicant wrote to the Council requiring a review of its failure to respond.
4. Although the Council responded to the Applicant's other requests on 1 July 2021, it failed to respond to this request.
5. The Applicant wrote to the Commissioner on 17 August 2021, stating that she 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.
6. On 6 October 2021, the Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from the Council on 25 November 2021. These submissions are considered below.

## Commissioner's analysis and findings

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8. 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.
9. The Council acknowledged that it had failed to respond to part of the request relating to the LRB recording.
10. The Council confirmed it was not aware of this error until the Commissioner's office contacted the Council on 6 October 2021. The Council explained that there had been ongoing correspondence in April and May 2021 between the Council and the Applicant's

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

agent and it was erroneously assumed that the information requested had already been provided.

11. On notification of this application, the Council supplied the information to the Applicant's agent on 1 November 2021, and disclosed it directly to the Applicant on 22 November 2021.
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 Council 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 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 Council 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 and regulation 16(4) of the EIRs.
16. As the Council responded to the Applicant's request on 22 November 2021, the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicant for its failure to comply (unless already done so).

## Decision

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The Commissioner finds that Midlothian Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) and with the Environmental Information (Scotland) Regulations (the EIRs) in dealing with the information request made by the Applicant concerning the recording. In particular, the Council failed to respond to one part of the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) of 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of these failures in response to the Applicant's application, given that the matter has been rectified and the information was disclosed to the Applicant.

## **Appeal**

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Should either the Applicant or Midlothian 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.

**Claire Stephen**  
**Deputy Head of Enforcement**

**9 December 2021**

**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)**