



# Decision Notice 092/2022

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## Auchinstarry Marina storage huts for Pontoon One residents – failure to respond

**Applicant:** The Applicant

**Authority:** British Waterways Board trading as Scottish Canals

**Case Ref:** 202200629

### Summary

The Applicant asked the Authority for evidence that its policy for reserving Auchinstarry Marina storage huts, for Pontoon One residents, was in existence prior to 18 October 2021 and for correspondence offering a storage hut to the owner of a named narrowboat.

This decision finds that the Authority failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

### Background

1. The Applicant made an information request to the Authority on 28 March 2022.
2. The Authority responded to the information request on 27 April 2022.
3. On 28 April 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 31 May 2021, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
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 1 June 2022.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority acknowledged that it had failed to respond to the requirement for review within the statutory timescale and apologised.
10. 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.
11. It is a matter of fact that the Authority 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.
12. 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.
13. It is a matter of fact that the Authority 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.
14. The Authority responded to the Applicant's requirement for review on 1 June 2022, apologising for the delay in providing a response, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

## **Appeal**

Should either the Applicant 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.

**Wendy Snedden**  
**Freedom of Information Officer**

**16 August 2022**