



# Decision Notice 137/2022

---

## Register of Common Good – failure to respond

**Applicant: The Applicant**

**Authority: West Lothian Council**

**Case Ref: 202201188**

### Summary

The Applicant asked the Authority to direct him to the Authority's common good register, and stated that he wanted details of any land or property that was on the register that had been disposed of or sold in the last financial year. This decision finds that the Authority failed to respond to the request and requirement for review within the timescales of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

### Background

1. The Applicant made an information request to the Authority on 27 July 2022.
2. The Authority did not respond to the information request.
3. On 1 September 2022, the Applicant wrote to the Authority requiring a review of its decision in respect of its failure to respond.
4. The Authority responded on 6 September 2022 and also acknowledged receipt of the Applicant's requirement for review concerning the failure to respond in time.
5. The Applicant wrote to the Authority on 17 and 24 October 2022, and stated that he wanted to receive a review from the Authority that explained why it had been late responding to his information request.
6. On 24 October 2022, 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. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.

7. 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

8. 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 31 October 2022.
9. The Commissioner received submissions from the Authority on 11 November 2022. These submissions are considered below.
10. The Authority explained that the request and requirement for review had not been logged correctly and acknowledged that this had resulted in the failures to respond in time.
11. 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 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.
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 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 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 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 and regulation 16(4) of the EIRs.
16. The Authority responded to the Applicant's requirement for review on 8 November 2022, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the Authority has now apologised to the Applicant for its failure to respond within the statutory timescales.

---

<sup>1</sup> <https://www.itspublicknowledge.info/decision-2182007>

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) 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 and regulations 5(2)(a) and 16(4) of the EIRs. Given that the Authority has now responded to the Applicant's requirement for review, the Commissioner 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.

**Colin MacFadyen**  
**Acting Deputy Head of Enforcement**  
**1 December 2022**