



# Decision Notice 021/2023

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## Incidents on specified road – failure to respond

**Applicant: The Applicant**

**Authority: Highland Council**

**Case Ref: 202300259**

### Summary

The Applicant asked the Authority for information relating to a specific road, regarding communications detailing any incidents that had occurred on it, as well as details of bitumen edging risk assessments. This decision finds that the Authority failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

### Background

1. The Applicant made an information request to the Authority on 25 November 2022.
2. The Authority responded to the information request on 22 December 2022.
3. On the same date, the Applicant wrote to the Authority requiring a review of its decision.
4. Although the Authority acknowledged the requirement for review on 29 December 2022, the Applicant did not receive a response to this.
5. The Applicant chased up the response on 30 January 2023, and received an acknowledgement from the Authority on the same day apologising for the delay, with an update that a response was being worked on.
6. The Applicant wrote to the Commissioner, stating that they were 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 28 February 2023.
9. The Commissioner received submissions from the Authority on 14 March 2023. These submissions are considered below.
10. 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.
11. The Authority acknowledged that it had not responded to the Applicant's requirement for review in time.
12. It explained that the requirement for review had not been logged correctly as a requirement for review and passed to the review team to deal with. Therefore, no action was taken.
13. The Authority further explained that it had spoken to the team that responded to this request; explaining the correct process to follow when a requirement for review is received. It confirmed that a response would now be issued to the Applicant, with a copy provided to the Commissioner. (This has not yet been done).
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. 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 Applicants' 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 remainder of section 21 and regulation 16 sets 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 Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 and regulation 16.
17. The Commissioner notes that the Authority intends to apologise to the Applicant for its failure to comply when it sends the response to the Applicant.

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<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 Applicants' requirement for review within the timescales laid down by section 21(1) of FOISA and regulation and 16(4) of the EIRs. The Commissioner requires the Authority to respond to the Applicants' requirement for review, by **27 April 2023**.

## **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.

## **Enforcement**

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

**Jill Walker**  
**Freedom of Information Officer**

**16 March 2023**