

# Decision Notice



Decision 110/2013 Mr Raymond Murray and Transport Scotland

Failure to respond to request and requirement for review

Reference No: 201301165  
Decision Date: 17 June 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

This decision considers whether Transport Scotland complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr Murray on 10 March 2013.

## Background

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1. On 10 March 2013, Mr Murray wrote to Transport Scotland requesting certain specified information.
2. Mr Murray received no response to his request.
3. On 11 April 2013, Mr Murray wrote to Transport Scotland, requesting a review in respect of the authority's failure to respond.
4. Mr Murray did not receive a response to his requirement for review and, on 14 May 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
5. The application was validated by establishing that Mr Murray made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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6. Transport Scotland is an agency of the Scottish Ministers (the Ministers). On 5 June 2013, in line with agreed procedures, the investigating officer notified the Ministers in writing that an application had been received from Mr Murray. The Ministers were invited to comment on the application, in accordance with section 49(3)(a) of FOISA.



7. Subsequent references to submissions from Transport Scotland are therefore references to submissions received from the Ministers on behalf of Transport Scotland.
8. Transport Scotland responded on 10 June 2013, confirming that it had responded to Mr Murray. It provided a copy of this response, which Mr Murray confirmed he had received.

## Commissioner's analysis and findings

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9. 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. In terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
10. This decision is concerned only with Transport Scotland's compliance with the technical requirements for responding to Mr Murray's request. Having considered the terms of the request, the Commissioner considers it likely that any information falling within its scope would properly be considered environmental information under the EIRs (as the Council also concluded in responding to Mr Murray's requirement for review). She has therefore considered the technical issues raised by this case in terms of both FOISA and the EIRs.
11. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 5(2)(a) of the EIRs.
12. Since Transport Scotland did not provide a response to Mr Murray's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
13. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
14. Since Transport Scotland did not provide a response to Mr Murray's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
15. Given that Transport Scotland has now responded to Mr Murray's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Murray's application.

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<sup>1</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



## DECISION

The Commissioner finds that Transport Scotland failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or with the Environmental Information (Scotland) Regulations 2004 (the EIRs), by failing to respond to Mr Murray's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2)(a) and 16(4) of the EIRs.

Given that Transport Scotland has now responded to Mr Murray's requirement for review, the Commissioner does not require Transport Scotland to take any action in respect of these failures, in response to Mr Murray's application.

## Appeal

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Should either Mr Murray or Transport Scotland wish to appeal against this decision, there is an 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**17 June 2013**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

#### The Environmental Information (Scotland) Regulations 2004

##### 5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

- (2) The duty under paragraph (1)-

- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and



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## 16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these regulations in relation to the applicant's request.

...

- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

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