

# Decision Notice

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## **Decision 084/2018: Mr Y and the Scottish Ministers**

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### **Unconventional oil and gas: failure to respond within statutory timescales**

Reference No: 201800728

Decision Date: 18 June 2018



Scottish Information  
Commissioner

## Summary

The Scottish Ministers (the Ministers) were asked for briefing papers about unconventional oil and gas sent between officials.

The decision finds that the Ministers failed to comply with Mr Y's requirement for review within the timescale set down by the EIRs.

The Commissioner has ordered the Ministers to comply with the requirement for review.

## Background

Date	Action
19 October 2017	Mr Y made an information request to the Ministers.
7 November 2017	The Ministers responded to the information request.
12 December 2017	Mr Y emailed the Ministers requiring a review of their decision.
15 January 2018	The Ministers acknowledged Mr Y's request for review.
	Mr Y did not receive a response to his requirement for review.
27 April 2018	Mr Y applied to the Commissioner's Office, stating that he was dissatisfied with the Minister's failure to respond and applied to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). The enforcement provisions of FOISA apply to the enforcement of the Environmental Information (Scotland) Regulations 2004 (the EIRs), subject to specified modifications; see regulation 17 of the EIRs.
1 June 2018	The Ministers were notified in writing that an application had been received from Mr Y and were invited to comment on the application.

## Commissioner's analysis and findings

1. 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.
2. In an email dated 4 June 2018 to a member of the Commissioner's staff, the Ministers stated that a response was being drafted and it would be issued after full consideration had been given to the proposed release. The Ministers commented that the delay was due to the

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

volume of files to be assessed. The Ministers were unable to give an indication of when the response would be provided to Mr Y.

3. 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.
4. It is a matter of fact that the Ministers did not provide a response to Mr Y's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
5. 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 Ministers failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21/regulation 16.
6. The Commissioner recommends that the Ministers consider whether it would be appropriate to apologise to Mr Y for their failure to comply.

## Decision

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The Commissioner finds that the Scottish Ministers 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 responding to the information request made by Mr Y. In particular, they failed to respond to Mr Y's requirement for review within the timescales laid down by section 21(1) of FOISA/regulation 16(4) of the EIRs.

The Commissioner therefore requires the Ministers to issue a review response within 45 calendar days after the date of intimation of this decision notice, that is by **2 August 2018**.

## Appeal

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Should either Mr Y or the Scottish Ministers 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

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

**Margaret Keyse**  
**Head of Enforcement**  
**18 June 2018**

**Scottish Information Commissioner**

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