

# Decision Notice

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**Decision 095/2018: Mr H and Highland Council**

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**Meetings with and gifts/donations by external organisations: failure to respond within statutory timescales**

Reference No: 201800772

Decision Date: 28 June 2018



Scottish Information  
Commissioner

## Summary

On 5 February 2018, Mr H asked Highland Council (the Council) for details of meetings with and gifts/donations received from external organisations in the last three years.

This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with Mr H's requirement for review within the timescale set down by FOISA/the EIRs.

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

## Background

Date	Action
5 February 2018	Mr H made an information request to the Council.
6 February 2018	Mr H received an acknowledgement of receipt of his request. However, the Council did not respond to the information request.
26 March 2018	Mr H wrote to the Council requiring a review of its failure to respond.
	Mr H did not receive a response to his requirement for review.
4 May 2018	Mr H wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures 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 June 2018	The Council was notified in writing that an application had been received from Mr H and was invited to comment on the application.
22 June 2018	The Commissioner received submissions from the Council. These submissions are considered below.

## 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 22 June 2018 to a member of the Commissioner's staff, the Council apologised for the failure to provide a response to Mr H's request and review request. The

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

Council commented that the delay was due to the wide scope of the request and the searches required to ensure all information falling within the request had been identified. This had been exacerbated by staffing issues and priorities. The Council was unable to give an indication of when the response would be provided to Mr H but stated that it would provide a response as soon as possible and apologised again for the poor handling of this request.

3. 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.
4. It is a matter of fact that the Council did not provide a response to Mr H'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.
5. 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.
6. It is a matter of fact that the Council did not provide a response to Mr H'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.
7. The remainder of section 21 and regulation 16 set 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 Council failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21/regulation 16.
8. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr H for its failure to comply.

## Decision

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The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr H. In particular, the Council failed to respond to Mr H's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA/regulation 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to issue a review response within 45 calendar days after the date of the intimation of this decision notice, that is by **13 august 2018**.

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## Appeal

Should either Mr H or Highland Council 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 Highland Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Highland Council has failed to comply. The Court has the right to inquire into the matter and may deal with Highland Council as if it had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**28 June 2018**

**Scottish Information Commissioner**

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