

# Decision Notice

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**Decision 109/2018: Mrs R and Dumfries and Galloway Council**

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**Road drainage information: failure to respond within statutory timescales**

Reference No: 201800945

Decision Date: 12 July 2018



Scottish Information  
Commissioner

## Summary

The Council was asked for information in relation to drainage on a specified road. This decision finds that Dumfries and Galloway Council (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 Mrs R's requirement for review within the timescale set down by FOISA and the EIRs.

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

## Background

Date	Action
11 March 2018	Mrs R made an information request to Dumfries and Galloway Council (the Council).
13 March 2018	The Council acknowledged receipt of the request but did not provide a response to the information request.
16 April 2018	Mrs R wrote to the Council requiring a review in respect of its failure to respond.
17 April 2018	The Council acknowledged Mrs R's request for a review, apologising for the delay, but did not provide a response to her requirement for review.
25 April and 2 May 2018	Mrs R wrote to the Council asking for updates on her requests.
3 May 2018	The Council acknowledged Mrs R's email dated 2 May 2018 but, again, did not provide a response to her requirement for a review.
3 June 2018	Mrs R wrote to the Commissioner's Office, stating that she 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.
20 June 2018	The Council was notified in writing that an application had been received from Mrs R and was invited to comment on the application.
	The Council did not provide the Commissioner with any submissions.

## Commissioner's analysis and findings

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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. 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.
3. It is a matter of fact that the Council did not provide a response to Mrs R'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.
4. 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.
5. It is a matter of fact that the Council did not provide a response to Mrs R'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.
6. The remainder of section 21 of FOISA and regulation 16 of the EIRs 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 and regulation 16.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mrs R for its failure to respond to her request.

## Decision

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

The Commissioner requires the Council to provide a review response, by **Monday 27 August 2018**.

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

## **Appeal**

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Should either Mrs R or Dumfries and Galloway 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 Dumfries and Galloway Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the public authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**12 July 2018**

**Scottish Information Commissioner**

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