

# Decision Notice

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## **Decision 249/2016: Mr Angus Pattison and East Dunbartonshire Council**

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**Information concerning the Bears Way Cycle route: failure to respond within statutory timescales**

Reference No: 201601814

Decision Date: 21 November 2016



## Summary

The Council was asked for information concerning Phase 3 of the Bears Way Cycle Route. The decision finds that the Council failed to comply with Mr Pattison's requirement for review within the timescales set down by FOISA and the EIRs.

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

## Background

Date	Action
4 July 2016	Mr Pattison made an information request to East Dunbartonshire Council (the Council).
28 July 2016	The Council responded to the information request.
3 August 2016	Mr Pattison wrote to the Council requiring a review of its decision.
	Mr Pattison did not receive a response to his requirement for review.
4 October 2016	Mr Pattison wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond and applying 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.)
28 October 2016	The Council was notified in writing that an application had been received from Mr Pattison and was invited to comment on the application.
11 November 2016	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 may 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

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

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 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.)
3. It is a matter of fact that the Council did not provide a response to Mr Pattison'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.
4. 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 Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 and regulation 16.
5. The Council explained that it had not identified Mr Pattison's requirement for review when it was received. Consequently, there was a delay in its processing. The Council stated that a full review response would be issued to Mr Pattison shortly. The Council also stated that it had drawn up procedural changes, with a revision to its tracking database; this would allow a clearer monitoring of its internal reviews.
6. The Commissioner notes this is not the first occasion when she has issued a decision in Mr Pattison's favour requiring the Council to issue a review response to him. (See also *Decision 212/2016 Mr Angus Pattison and East Dunbartonshire Council*<sup>2</sup> and *Decision 215/2016 Mr Angus Pattison and East Dunbartonshire Council*.<sup>3</sup>). In the circumstances, the Commissioner recommends that the Council should apologise to Mr Pattison for its failure to comply.

## Decision

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The Commissioner finds that East Dunbartonshire 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 Mr Pattison. In particular, the Council failed to respond to Mr Pattison's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Council to provide a response to Mr Pattison's requirement for review by **5 January 2017**.

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<sup>2</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2016/201601578.aspx>

<sup>3</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2016/201601588.aspx>

## **Appeal**

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Should either Mr Pattison or East Dunbartonshire 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 East Dunbartonshire Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council 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**

**21 November 2016**

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