



# Decision Notice 019/2024

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## Low Emission Zone penalty charge notices – failure to respond

**Applicant: The Applicant**

**Authority: Glasgow City Council**

**Case Ref: 202301191**

### Summary

The Applicant asked the Authority for various information relating to the issue of Low Emission Zone penalty charge notices. This decision finds that the Authority failed to respond to the information request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

### Background

1. The Applicant made an information request to the Authority on 22 July 2023.
2. The Authority did not respond to the information request.
3. On 6 September 2023, the Applicant wrote to the Authority decision in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 21 September 2023, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure 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.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

## Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 3 October 2023.
8. The Commissioner received submissions from the Authority on 18 October 2023. These submissions are considered below.
9. The Authority accepted that it had failed to respond to the Applicant's information request and requirement for review with the timescales allowed by FOISA and the EIRs.
10. The Authority explained that the request and requirement for review had not been logged correctly and acknowledged that this had resulted in the failures to respond in time.
11. The Authority confirmed that it will be conducting a review of its generic mailboxes and providing training to staff that monitor mailboxes and to colleagues more widely to ensure that all staff are aware of their obligations under FOI law.
12. 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 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.
13. 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.
14. It is a matter of fact that the Authority did not provide a response to the Applicant'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.
15. 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.
16. It is a matter of fact that the Authority did not provide a response to the Applicant'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.
17. The Authority responded to the Applicant's requirement for review on 6 October 2023, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
18. The Commissioner notes that the Authority apologised to the Applicant for its failure to comply.

## Decision

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<sup>1</sup> <https://www.itspublicknowledge.info/decision-2182007>

The Commissioner finds that the Authority 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 dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs. Given that the Authority has now responded to the Applicant's requirement for review, the Commissioner does not require the Authority to take any action.

## **Appeal**

Should either the Applicant or the Authority 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.

**Cal Richardson**  
**Deputy Head of Enforcement**

**6 February 2024**