

# Decision Notice

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## **Decision 228/2016: Mr Gordon Stalker and Angus Council**

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**Lease of South Links Caravan Park, Montrose: failure to respond within statutory timescales**

Reference No: 201601793

Decision Date: 27 October 2016



Scottish Information  
Commissioner

## Summary

On 19 July 2016, Mr Stalker asked Angus Council (the Council) for information about the agreement between the Council and a named director of WOW Leisure Limited on the compulsory sequestration of South Links Caravan Park in Montrose. He also asked for evidence that the Council “carried out due diligence” on the same director before entering into the agreement.

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 Stalker’s requirement for review within the timescale set down by FOISA and the EIRs.

## Background

Date	Action
19 July 2016	Mr Stalker made an information request to the Council.
25 July 2016	Although the Council acknowledged the request and provided updates to Mr Stalker on the status of his request, it did not provide a response.
25 August 2016	Mr Stalker wrote to the Council requiring a review of its failure to respond.
25 August 2016	Again, although Mr Stalker received an acknowledgement, he did not receive a response to his requirement for review.
1 October 2016	Mr Stalker 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.
11 October 2016	The Council was notified in writing that an application had been received from Mr Stalker and was invited to comment on the application.
20 October 2016	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner’s analysis and findings

1. It is possible 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.

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

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 Mr Stalker'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 Mr Stalker'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 Council explained that the delay was due to difficulties in locating the evaluation paperwork, as the member of staff responsible for the bid evaluation had left the Council.
7. The Council acknowledged that it had failed to respond on time and explained that it had recently implemented changes in personnel dealing with reviews. It confirmed that it was taking immediate steps to deal with late responses, including quarterly reporting to senior management. The Commissioner welcomes the steps being taken.
8. As the Council responded to Mr Stalker's requirement for review on 20 October 2016, the Commissioner does not require it to take any further action in relation to Mr Stalker's application.
9. The Commissioner notes that the Council to apologised to Mr Stalker for its failure to comply.

## Decision

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The Commissioner finds that Angus 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 Stalker. In particular, the Council failed to respond to Mr Stalker'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 does not require the Council to take any action in respect of these failures, in response to Mr Stalker's application, given that a response was issued on 20 October 2016.

## **Appeal**

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Should either Mr Stalker or Angus 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.

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

**27 October 2016**

**Scottish Information Commissioner**

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