



# Freedom of Information (Scotland) Act 2002

2002 asp 13

## PART 4

### ENFORCEMENT

#### 49 Commissioner's decision

- (1) The Commissioner must make a decision in relation to an application made in accordance with section 47(1) which is not excluded by section 48 unless—
  - (a) in the opinion of the Commissioner, the application is frivolous or vexatious; or
  - (b) in the opinion of the Commissioner, the application appears to have been withdrawn or abandoned.
- (2) In a case where the Commissioner determines that subsection (1) does not require a decision to be made, that officer must give the applicant and the Scottish public authority in question notice in writing within one month of receipt of the application, or within such other period as is reasonable in the circumstances, specifying—
  - (a) that no decision falls to be made in relation to the application; and
  - (b) the reasons why that is the case.
- (3) In any other case, the Commissioner must—
  - (a) give that authority notice in writing of the application and invite its comments; and
  - (b) if no settlement has in the meantime been effected, reach a decision on the application before the expiry of four months after receiving it, or before the expiry of such other period as is reasonable in the circumstances.
- (4) The Commissioner may endeavour to effect a settlement between the applicant and that authority before the expiry of the period allowed by subsection (3) for reaching a decision on the application.
- (5) The Commissioner must give the applicant and that authority, within the time allowed by subsection (3), notice in writing (referred to in this Act as a “decision notice”) of any decision under paragraph (b) of that subsection.

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*Status: Point in time view as at 13/02/2006. This version of this provision has been superseded.*

*Changes to legislation: Freedom of Information (Scotland) Act 2002, Section 49 is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (6) Where the Commissioner decides that that authority has not dealt with a request for information in accordance with Part 1 of this Act, the notice under subsection (5) must specify—
- (a) the provision of that Part with which the authority has failed to comply and the respect in which it has so failed;
  - (b) the steps which, in the opinion of the Commissioner, the authority must take to comply with the provision; and
  - (c) the time within which those steps must be taken.
- (7) The time specified under subsection (6)(c) must not expire before the end of the period within which an appeal may be brought under section 56 against the decision of the Commissioner and, if such an appeal is brought, no step which is affected by the appeal need be taken before the cause is finally determined.
- (8) A notice under subsection (2) or (5) must contain particulars of the right of appeal conferred by section 56.
- (9) This section is subject to section 52.

**Modifications etc. (not altering text)**

- C1** S. 49 applied (with modifications) (31.12.2009) by [The INSPIRE \(Scotland\) Regulations 2009 \(S.S.I. 2009/440\)](#), [reg. 12\(2\)\(c\)](#), Sch.

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