

Decision Notice



Decision 195/2013 Colin McLeod and Dundee City Council

Failure to respond to requirement for review

Reference No: 201301884

Decision Date: 4 September 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

This decision considers whether Dundee City Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr McLeod.

Background

1. On 6 May 2013, Mr McLeod wrote to the Council requesting certain specified information.
2. The Council responded on 18 June 2013.
3. On 20 June 2013, Mr McLeod wrote to the Council requesting a review of its decision.
4. Mr McLeod did not receive a response to his requirement for review and, on 14 August 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
5. The application was validated by establishing that Mr McLeod made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 16 August 2013, the Council was notified in writing that an application had been received from Mr McLeod and invited to comment on the application.
7. The Council responded on 27 August 2013, confirming that it had responded to Mr McLeod. Mr McLeod confirmed that he had received the response to his requirement for review.



Commissioner's analysis and findings

8. The Council explained that the requirement for review had been passed to both the Director of City Development and the Environment Department, to ensure a full response. Unfortunately, due to staffing issues, the matter was not dealt with. The Council apologised for this administrative error.
9. From the terms of the request, it is apparent 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*¹ the Commissioner confirmed (at paragraph 51) that where environmental information is concerned, there are two separate statutory frameworks for access to that information. In terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
10. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
11. Since the Council did not provide a response to Mr McLeod's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
12. Given that the Council has now responded to Mr McLeod's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr McLeod's application.

DECISION

The Commissioner finds that Dundee City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or with the Environmental Information (Scotland) Regulations 2004 (the EIRs), by failing to respond to Mr McLeod's requirement for review within the respective timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

Given that the Council has now responded to Mr McLeod's requirement for review, the Commissioner does not require the Council to take any action in response to this failure, in response to Mr McLeod's application.

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

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Mr Colin McLeod
and Dundee City Council



Appeal

Should either Mr McLeod or Dundee City 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.

Euan McCulloch
Deputy Head of Enforcement
4 September 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

The Environmental Information (Scotland) Regulations 2004

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

...

- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

...