

Decision Notice



Decision 244/2013 Tayside Aviation and Transport Scotland

Failure to respond to requirement for review

Reference No: 201302241

Decision Date: 31 October 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether Transport Scotland 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 Tayside Aviation on 22 July 2013.

Background

1. On 22 July 2013, Tayside Aviation wrote to Transport Scotland requesting certain specified information.
2. Transport Scotland responded on 25 July 2013, refusing the information without citing any provisions of FOISA or the EIRs.
3. On 21 August 2013, Tayside Aviation wrote to Transport Scotland requesting a review of its decision.
4. Tayside Aviation did not receive a response to its requirement for review and, on 26 September 2013, wrote to the Commissioner's Office, stating that it 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 Tayside Aviation 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. Transport Scotland is an agency of the Scottish Ministers (the Ministers). On 14 October 2013, in line with agreed procedures, the investigating officer notified the Ministers in writing that an application had been received from Tayside Aviation. The Ministers were invited to comment on the application, in accordance with section 49(3)(a) of FOISA.



7. Transport Scotland did not provide a response to the letter from the investigating officer within the deadline set. No such response was provided by the Ministers on Transport Scotland's behalf.

Commissioner's analysis and findings

8. 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.
9. This decision is concerned only with Transport Scotland's compliance with the technical requirements for responding to Tayside Aviation's request. Having considered the terms of the request, the Commissioner considers it likely that at least some of the information falling within its scope would properly be considered environmental information under the EIRs. She has therefore considered the technical issues raised by this case in terms of 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 Transport Scotland did not provide a response to Tayside Aviation'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. The remainder of section 21 and regulation 16 set 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 Transport Scotland failed to discharge these requirements: she now requires a review to be carried out in accordance with them.
13. The Commissioner notes that Transport Scotland's response of 25 July 2013 made no reference to any provisions of FOISA and the EIRs it considered applicable in refusing Tayside Aviation's request. She would expect this, in particular, to be addressed in Transport Scotland's review and the outcome of that review.

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



DECISION

The Commissioner finds that Transport Scotland 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), in dealing with Tayside Aviation's request for information, by failing to respond to Tayside Aviation's requirement for review within the respective timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs, or otherwise in accordance with section 21 and regulation 16.

The Commissioner therefore requires Transport Scotland to provide a response to Tayside Aviation's requirement for review, in line with section 21 and regulation 16, by 16 December 2013.

Appeal

Should either Tayside Aviation or Transport Scotland 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
31 October 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.

- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

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.

...

- (3) The Scottish public authority shall on receipt of such representations-



- (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (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.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.