

Decision Notice

Decision 150/2014 Mrs W and East Dunbartonshire Council

Planning application: failure to respond within statutory timescales

Reference No: 201401226

Decision Date: 08 July 2014



Scottish Information
Commissioner

Summary

On 3 March 2014, Mrs W asked East Dunbartonshire Council (the Council) for information about a planning application. 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 Mrs W's requirement for review within the timescale set down by FOISA and the EIRs.

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
3 March 2014	Mrs W made an information request to the Council.
	The Council did not respond to the information request.
4 April 2014	Mrs W wrote to the Council requiring a review of its failure to respond.
	Mrs W did not receive a response to her requirement for review.
2 June 2014	Mrs W wrote to the Commissioner's Office, stating that she was dissatisfied with the Council'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.
18 June 2014	The Council was notified in writing that an application had been received from Mrs W and was invited to comment on the application.
1 July 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council has confirmed that it received Mrs W's request and requirement for review, and intends to send a review response to her. It explained that there may have been some confusion in dealing with the request due to the fact that there had been previous correspondence with Mrs W. The Council had not responded to Mrs W by the time of this decision.

2. From the terms of the request, it is apparent that at least some of the information caught by it is likely to 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 and, in terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
3. 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.
4. It is a matter of fact that the Council did not provide a response to Mrs W'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.
5. 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.
6. It is a matter of fact that the Council did not provide a response to Mrs W'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.
7. 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 the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 and regulation 16.

Decision

The Commissioner finds that East Dunbartonshire 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 Mrs W. In particular, the Council failed to respond to Mrs W'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 requires the Council to provide Mrs W with a response to her requirement for review, by **Friday 22 August 2014**.

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

Appeal

Should either Mrs W or East Dunbartonshire 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.

Enforcement

If East Dunbartonshire Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that East Dunbartonshire Council has failed to comply. The Court has the right to inquire into the matter and may deal with East Dunbartonshire Council as if had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement
08 July 2014

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