

Decision Notice

Decision 168/2014 Mr Sol Shaw and East Dunbartonshire Council

Road Safety Inspection Reports: failure to respond within statutory timescales

Reference No: 201401375

Decision Date: 29 July 2014



Scottish Information
Commissioner

Summary

On 8 April 2014, Mr Shaw asked East Dunbartonshire Council (the Council) for information about road safety inspection reports. 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)/the Environmental Information (Scotland) Regulations 2004 (the EIRs). This decision also finds that the Council failed to comply with Mr Shaw's requirement for review within the timescale set down by FOISA/the EIRs.

Background

Date	Action
8 April 2014	Mr Shaw made an information request to the Council.
	The Council did not respond to the information request.
27 May 2014	Mr Shaw wrote to the Council requiring a review of its failure to respond.
	Mr Shaw did not receive a response to his requirement for review.
26 June 2014	Mr Shaw 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 July 2014	The Council was notified in writing that an application had been received from Mr Shaw and was invited to comment on the application.
28 July 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. 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 and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
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.

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

3. It is a matter of fact that the Council did not provide a response to Mr Shaw'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 Shaw'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 remainder of section 21 and regulation 16 set out the requirements to be followed by a Scottish public authority in carrying out a review.
7. The Council responded to Mr Shaw's requirement for review on 28 July 2014, so the Commissioner does not require it to take any further action in relation to Mr Shaw's application.
8. The Commissioner notes that the Council has taken steps to improve its procedures for dealing with information requests.

Decision

The Commissioner finds that 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 Shaw. In particular, the Council failed to respond to Mr Shaw'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.

Given that the Council has now responded to Mr Shaw's requirement for review, the Commissioner does not require the Council to take any action in respect of these failures.

Appeal

Should either Mr Shaw or the 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.

Alison Davies
Deputy Head of Enforcement
29 July 2014

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