

Decision Notice

Decision 224/2014: Mr P and Scottish Borders Council

Late completion of a new school: failure to respond within statutory timescales

Reference No: 201402305

Decision Date: 23 October 2014



Scottish Information
Commissioner

Summary

On 5 November 2013, Mr P asked Scottish Borders Council (the Council) for information about the penalty paid by construction firms for the late completion of a new school. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
5 November 2013	Mr P made an information request to the Council.
20 November 2013	The Council responded to the information request.
29 December 2013	Mr P wrote to the Council requiring a review of its decision.
29 April 2014	Mr P sent a reminder to the Council that he still had not received a response.
25 June 2014 and 26 August 2014	Although Mr P received, separately, an acknowledgement and further update, he did not receive a response to his requirement for review.
20 September 2014	Mr P wrote to the Commissioner's Office, stating that he 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.
30 September 2014	The Council was notified in writing that an application had been received from Mr P and was invited to comment on the application.
14 October 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council has responded to Mr P's request in terms of the EIRs, believing that the information caught by the request is 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 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. This

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

is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.

3. It is a matter of fact that the Council did not provide a response to Mr P'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.
4. The Council acknowledged that it failed to carry out a review within the timescale allowed. It advised that it is currently identifying measures to improve overall efficiency of its review procedure.
5. The Council responded to Mr P's requirement for review on 6 October 2014, so the Commissioner does not require it to take any further action in relation to Mr Ps application.

Decision

The Commissioner finds that Scottish Borders 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 Mr P. In particular, the Council failed to respond to Mr Ps requirement for review within the timescales laid down by sections 21(1) of FOISA/regulation 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mr P's application, given that a review response has now been issued.

Appeal

Should either Mr P or Scottish Borders 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

23 October 2014

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info