

Decision Notice

Decision 113/2015: Mr V and City of Edinburgh Council

Remediation reports for completed development:

Failure to respond within statutory timescales

Reference No: 201501061

Decision Date: 14 July 2015



Scottish Information
Commissioner

Summary

On 6 June 2015, Mr V asked City of Edinburgh Council (the Council) for remediation reports on a completed development. 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
11 January 2015	Mr V made an information request to the Council.
4 February 2015	The Council responded to the information request.
4 February 2015	Mr V wrote to the Council to clarify his request as the response referred to matters he had not asked about.
10 March 2015	As Mr V had not received a response to his request he wrote to the Council requiring a review of its decision and failure to respond.
11 March 2015	The Council acknowledged his requirement for review.
2 May 2015	As Mr V had not received a response to his first requirement for review (10 March 2015) he made another request for a review.
6 June 2015	Mr V 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.
23 June 2015	The Council was notified in writing that an application had been received from Mr V and was invited to comment on the application.
7 July 2015	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request 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 Scotland¹*, 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.

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

2. The Council acknowledged that it had received Mr V' first requirement for review on 10 March 2015, and explained it had not been recognised as a requirement for review at the time. Instead, it was processed as ongoing correspondence between the applicant and the Council officer.
3. It was only when the Council received Mr V' second requirement for review on 2 May 2015 that the Council realised Mr V wanted a review to be carried out.
4. On 7 July 2015 the Council responded to Mr V' requirement for review. A copy was provided to the Commissioner
5. The Council accepts that it had not responded to Mr V' requirement for review within the statutory timescales and apologised to Mr V in its letter of 7 July 2015 for the delay in responding to his requests.
6. 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 is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.
7. It is a matter of fact that the Council did not provide a response to Mr V' 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.
8. Given that the Council has now responded to Mr V' requirement for review, the Commissioner does not require it to take any further action in relation to his application.

Decision

The Commissioner finds that City of Edinburgh 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). The Council failed to respond to Mr V' requirement for review within the timescales laid down by section 21(1) of FOISA and 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 V' application, given that a review response has now been issued.

Appeal

Should either Mr V or City of Edinburgh 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

14 July 2015

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