

# Decision Notice

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**Decision 004/2016: Mr P and City of Edinburgh Council**

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**Authorised Advertising Project: failure to respond within statutory timescales**

Reference No: 201502079

Decision Date: 14 January 2016



Scottish Information  
Commissioner

## Summary

On 1 May 2015, Mr P asked City of Edinburgh Council (the Council) for information about advertising stations allegedly being operated illegally. This decision finds that the Council failed to respond to the request within the timescales 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 Mr P's requirement for review within the timescales set down by FOISA and the EIRs.

## Background

Date	Action
1 May 2015	Mr P made an information request to the Council.
4 June 2015	The Council responded to the information request.
5 June 2015	Mr P wrote to the Council requiring a review of its decision.
8 July 2015	The Council responded to the requirement for review.
5 November 2015	Mr P 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.
24 November 2015	The Council was notified in writing that an application had been received from Mr P and was invited to comment on the application.
17 December 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 Scotland*<sup>1</sup>, 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.

<sup>1</sup> <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 P'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 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.
6. The Council acknowledged that it had not responded to the request in time, referring to the high volume and complexity of requests being received from Mr P at that time.
7. The Commissioner notes that the Council has apologised to Mr P for the delay in responding.
8. The Council also acknowledged that it had not responded to Mr P's requirement for review in time, explaining that the response had been prepared for issue on 3 July 2015 but not sent out until 8 July 2015.
9. Again, the Commissioner notes the Council's apology to Mr P for this delay.

## Decision

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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) and 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 P's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr P's application, given that the Council did respond to both the request and the requirement for review.

## Appeal

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Should either Mr P or City of Edinburgh Council (the 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 January 2016**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**