

Decision Notice

Decision 119/2016: Mr William Skidmore and Aberdeen City Council

Marischal Square Development: Failure to respond within statutory timescales

Reference No: 201600664

Decision Date: 26 May 2016



Scottish Information
Commissioner

Summary

On 1 November 2015, Mr Skidmore asked Aberdeen City Council (the Council) for information about the Marischal Square Development, relating to a contract awarded by the Council. He clarified his request on 15 December 2015. 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). The decision also finds that the Council failed to comply with Mr Skidmore's requirement for review within the timescale set down by FOISA/the EIRs.

Background

Date	Action
1 November 2015	Mr Skidmore made an information request to the Council, which he clarified on 15 December 2015.
15 December 2015	Although the Council acknowledged the clarified request, it did not provide a response.
8 January 2016	The Council told Mr Skidmore it had extended the times for response by an additional 20 working days, under regulation 7(1) of the EIRs.
29 February 2016	Mr Skidmore wrote to the Council requiring a review of its failure to respond.
1 March 2016	Again, although Mr Skidmore received an acknowledgement he did not receive a response to his requirement for review.
12 April 2016	Mr Skidmore 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.
15 April 2016	Mr Skidmore received a response to his requirement for review after he applied to the Commissioner. He confirmed on 9 May 2016 that he still required a decision to be issued.
11 May 2016	The Council was notified in writing that an application had been received from Mr Skidmore and was invited to comment on the application.
24 May 2016	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*¹, the Commissioner confirmed at

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

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.
3. It is a matter of fact that the Council did not provide a response to Mr Skidmore's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
4. Regulation 5(2)(a) of the EIRs 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. Under regulation 7(1) of the EIRs, Scottish public authorities can extend this period by another 20 working days in certain circumstances. As noted above, the Council chose to do this in this case. However, the Council failed to provide a response to Mr Skidmore within that period, and therefore failed to comply with regulation 7(2) 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 Mr Skidmore'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 Council acknowledged that it had not met the timescales for responding to the request or carrying out a review. It explained the delay was due to the length and complexity of the request and pressures on staffing resources.
8. As a result of this application to the Commissioner, the Information Compliance Team confirmed that it would co-ordinate a 'Lessons Learned' exercise, to help improve the Council's compliance with statutory timescales. It intends to issue a report identifying areas for improvement.
9. The Commissioner notes the Council's good practice regarding the training calendar of events, where bespoke training sessions have been organised for staff.
10. The Commissioner notes that the Council apologised to Mr Skidmore for its failure to comply in its response of 15 April 2016.

Decision

The Commissioner finds that Aberdeen City 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 Skidmore. In particular, the Council failed to respond to Mr Skidmore's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 7(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any further action in respect of these failures, in response to Mr Skidmore's application, given that a review response was issued during the course of the investigation.

Appeal

Should either Mr Skidmore or Aberdeen City 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

26 May 2016

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