

Decision Notice

Decision 143/2016: Mr Peter Wattingham and North Ayrshire Council

Planning Applications: failure to respond within statutory timescales

Reference No: 201601018

Decision Date: 29 June 2016



Scottish Information
Commissioner

Summary

On 14 February and 12 March 2016, Mr Wattingham asked North Ayrshire Council (the Council) for information about specific planning applications. This decision finds that the Council failed to respond to the second request within the timescale allowed by the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with Mr Wattingham's requirement for review within the timescale set down by the EIRs.

Background

Date	Action
14 February 2016	Mr Wattingham made an information request to the Council.
18 February 2016	The Council responded to the information request, informing Mr Wattingham that the information was available online.
18 February 2016	Mr Wattingham wrote to the Council requiring a review of its decision.
11 March 2016	The Council informed Mr Wattingham that the planning files he wished to access were now available online and provided him with a link to this.
12 March 2016	Mr Wattingham wrote back, informing the Council that documents were missing (asking for these documents specifically), and at the same time requesting documents for a number of additional planning applications.
20 April 2016	Mr Wattingham did not receive a response to his request of 12 March and asked for a review to be carried out.
22 April 2016	The Council acknowledged Mr Wattingham's requirement for review.
26 May 2016	Mr Wattingham 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.
30 May 2016	The Council carried out a review and posted the response on the "Whatdotheyknow" website.
8 June 2016	The Council was notified in writing that an application had been received from Mr Wattingham and was invited to comment on the application.
27 June 2016	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. In this case, the Commissioner is satisfied that Mr Wattingham requested environmental information, as defined by regulation 2(1) of the EIRs. The Council has acknowledged this and the Commissioner will consider Mr Wattingham's application in what follows solely in terms of the EIRs.
2. The Council acknowledged that it had not responded to Mr Wattingham's second request or his requirement for review. The Council explained that it had experienced a significant increase in requirements for review in the first half of 2016.
3. The Council confirmed that it had taken steps to improve practice in this area. In particular, it had implemented a system to track all reviews and reorganised its freedom of information processes as part of a wider process of corporate improvement. The Commissioner welcomes the steps taken (and being taken) by the Council.
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. This is subject to qualifications which are not relevant in this case. The same timescale is laid down by.
5. It is a matter of fact that the Council did not provide a response to Mr Wattingham's second request for information within 20 working days, so the Commissioner finds that it failed to comply with regulation 5(2)(a) of the EIRs.
6. Regulation 16(4) of the EIRs 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.
7. It is a matter of fact that the Council did not provide a response to Mr Wattingham's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with regulation 16(4) of the EIRs.
8. The Commissioner notes that the Council apologised to Mr Wattingham in the review outcome for its failure to comply.

Decision

The Commissioner finds that North Ayrshire Council (the Council) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the second information request made by Mr Wattingham. In particular, the Council failed to respond to this request and Mr Wattingham's requirement for review within the timescales laid down by regulation 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 Wattingham's application, given that a response was provided on 30 May 2016.

Appeal

Should either Mr Wattingham or 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.

Euan McCulloch
Deputy Head of Enforcement

29 June 2016

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info