

# Decision Notice

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**Decision 174/2016: Wardell Armstrong LLP and Aberdeen City Council**

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**Financial Assessment: Failure to respond within statutory timescales**

Reference No: 201601299

Decision Date: 11 August 2016



Scottish Information  
Commissioner

## Summary

On 11 March 2016, Wardell Armstrong LLP (Wardell Armstrong) asked Aberdeen City Council (the Council) for a report assessing the applicants' financial case in relation to a planning application. This decision finds that the Council failed to comply with Wardell Armstrong's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The Commissioner has ordered the Council to comply with the requirement for review.

## Background

Date	Action
11 March 2016	Wardell Armstrong made an information request to the Council.
13 April 2016	Although the Council acknowledged the request, it also advised Wardell Armstrong to request a review, as it had missed the statutory deadline to respond to them.
9 May 2016	Wardell Armstrong wrote to the Council requiring a review in respect of its failure to respond.
9 May 2016	Again, although the Council acknowledged receipt of Wardell Armstrong's requirement for review, it did not send a response.
16 June 2016	Wardell Armstrong made a further requirement for review, as no response had been received from the Council.
22 June 2016	The Council acknowledged the second requirement for review, apologising for its failure to respond. It stated that it was still waiting for a reply from the Service involved with this request and advised that Wardell Armstrong could apply to the Commissioner for a decision about the Council's handling of the request and failure to provide a response.
21 July 2016	Wardell Armstrong wrote to the Commissioner's Office, expressing dissatisfaction 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.
25 July 2016	The Council was notified in writing that an application had been received from Wardell Armstrong and was invited to comment on the application.
11 August 2016	The Commissioner received submissions from the Council. These submissions are considered below.

## Commissioner's analysis and findings

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1. The Council explained that the information covered by the request comprises a report containing a financial assessment. As the information was commercially sensitive, the Council had not made this information available to the public or third parties.
2. The Council confirmed that it had not responded to the request because it had assumed that Wardell Armstrong would withdraw the request after attending a meeting with the Council where this report was discussed, and a subsequent site meeting with planning officials. The Council stated that it had advised Wardell Armstrong to contact the author of the report directly to informally discuss its contents and obtain relevant information.
3. The Council accepts that it should not have assumed that Wardell Armstrong would withdraw the request and should have processed the request as normal. The Council confirmed that a response will now be issued to Wardell Armstrong. This had not been done at the time of this decision.
4. As a result of this application to the Commissioner, the Council's Information Governance Team confirmed 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.
5. 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.
6. 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.
7. It is a matter of fact that the Council did not provide a response to Wardell Armstrong'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.
8. 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.
9. It is a matter of fact that the Council did not provide a response to Wardell Armstrong'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.
10. The remainder of section 21 and regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 and regulation 16.

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

## Decision

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The Commissioner finds that Aberdeen City 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 Wardell Armstrong. In particular, the Council failed to respond to Wardell Armstrong's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to a response to Wardell Armstrong's request and request for review, by **26 September 2016**.

## Appeal

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Should either Wardell Armstrong 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.

## Enforcement

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If Aberdeen City Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**11 August 2016**

**Scottish Information Commissioner**

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