

Decision Notice

**Decision 225/2016: Mr William Roddie & Spectrum Properties
(Scotland) Limited and Stirling Council**

Sauchieburn Estate: failure to respond within statutory timescales

Reference No: 201601728

Decision Date: 24 October 2016



Scottish Information
Commissioner

Summary

On 24 March, Berrymans Lace Mawer LLP asked Stirling Council (the Council), on behalf of Mr Roddie and Spectrum Properties (Scotland) Limited (Spectrum), for information about planning issues and property rights in relation to land at Sauchieburn Estate. 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) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with Mr Roddie and Spectrum's requirement for review within the timescale set down by FOISA and the EIRs.

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

Background

Date	Action
24 March 2016	Mr Roddie and Spectrum made an information request to the Council.
29 March 2016	Although the Council acknowledged the request, it did not respond to the information request.
3 June 2016	Mr Roddie and Spectrum wrote to Stirling Council requiring a review in respect of its failure to respond.
6 June 2016	Again, although the Council acknowledged the requirement for review, Mr Roddie and Spectrum did not receive a response to it.
20 September 2016	Mr Roddie and Spectrum wrote to the Commissioner's Office, stating that they were dissatisfied with the Council's failures to respond to paragraphs 2 and 3 of the request and applying to the Commissioner for a decision 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 September 2016	The Council was notified in writing that an application had been received from Mr Roddie and Spectrum and was invited to comment on the application.
14 October 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 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 the 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.
3. It is a matter of fact that the Council did not provide a response to Mr Roddie and Spectrum'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 Roddie and Spectrum'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 remainder of section 21 and regulation 16 set 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.
7. The Council accepted that it failed to respond to Mr Roddie and Spectrum within the statutory timescales. It explained that the request involved a large volume of information dating from 2004 – 2016, but confirmed that it was currently working on the review.
8. The Council also acknowledged that its communication with the applicants could have been better. It identified organisational issues which it believed had undermined its handling of the request.
9. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr Roddie and Spectrum for its failure to comply.

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

Decision

The Commissioner finds that Stirling 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 Roddie and Spectrum Properties (Scotland) Limited (Spectrum). In particular, the Council failed to respond to Mr Roddie and Spectrum'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 provide Mr Roddie and Spectrum with a review outcome, by **8 December 2016**.

Appeal

Should either Mr Roddie and Spectrum Properties (Scotland) Limited (Spectrum) or Stirling 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

If Stirling 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.

Euan McCulloch
Deputy Head of Enforcement

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