

Decision Notice

Decision 119/2018: Mr F and Dumfries and Galloway Council

Road inspections: failure to respond within statutory timescales

Reference No: 201801041
Decision Date: 30 July 2018



Scottish Information
Commissioner

Summary

Mr F asked for details of safety inspections and road repairs on a specified road. This decision finds that Dumfries and Galloway Council (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 F's requirement for review within the timescale set down by FOISA and the EIRs.

As the Council issued a review response on 21 June 2018, the Commissioner has not required any further action.

Background

Date	Action
20 March 2018	Mr F made an information request to Dumfries and Galloway Council (the Council).
20 March 2018	The Council acknowledged receipt of the request but did not provide a response.
20 April 2018 and 27 April 2018	Mr F wrote to the Council requiring a review in respect of its failure to respond.
	Mr F did not receive a response to either of his requirements for review.
19 June 2018	Mr F 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.
21 June 2018	The Council was notified in writing that an application had been received from Mr F and was invited to comment on the application.
25 June 2018	Mr F notified the Commissioner that he had now received a review response from the Council.
5 July 2018	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

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

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.
3. It is a matter of fact that the Council did not provide a response to Mr F'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 Dumfries and Galloway Council did not provide a response to Mr F's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA regulation 16(4) of the EIRs.
6. The Council sent Mr F a response to his requirement for review on 21 June 2018. It apologised for the considerable delay in issuing a review response.
7. The Council advised the Commissioner that it is experiencing acute staffing challenges and is currently reviewing its current structure and resources for dealing with FOISA requests.
8. As the Council responded to Mr F's requirement for review on 21 June 2018, the Commissioner does not require it to take any further action in relation to Mr F's application.

Decision

The Commissioner finds that Dumfries and Galloway 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 F. In particular, the Council failed to respond to Mr F'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 does not require the Council to take any action in respect of these failures, in response to Mr F's application, given that it issued a response to his requirement for review on 21 June 2018.

Appeal

Should either Mr F or Dumfries and Galloway 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 Dumfries and Galloway 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

30 July 2018

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