

Decision Notice 093/2021

Complaints and tenancy agreement– failure to respond

Applicant: The Applicant

Public authority: Falkirk Council

Case Ref: 202100606



Scottish Information
Commissioner

Summary

The Applicant asked Falkirk Council (the Council) for information related to a complaint and a copy of the Council's standard tenancy agreement.

This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

1. The Applicant made information requests to the Council on 24 March 2021.
2. The Council responded to the information requests on 30 March 2021.
3. On the same day, the Applicant wrote to the Council requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. On 12 May 2021, the Applicant wrote to the Commissioner, stating that she was dissatisfied 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.
6. On 17 May 2021, the Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

8. 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 EIRs.
9. The Council acknowledged that it had not handled the Applicant's information requests correctly and failed to respond to the Applicant's requirement for review. It accepted that the requests should have been identified as freedom of information requests and dealt with under FOISA.
10. 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. 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.

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

11. It is a matter of fact that the Council did not provide a response to the Applicant'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.
12. As the Council responded to the Applicant's requirement for review on 25 May 2021, the Commissioner does not require it to take any further action in relation to the Applicant's application.
13. The Commissioner also notes that the Council has apologised to the Applicant for its failure to comply.

Decision

The Commissioner finds that Falkirk Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) and with the Environmental Information (Scotland) Regulations (the EIRs) in dealing with the information request made by the Applicant. In particular, the Council failed to respond to the Applicant's requirement for review within the timescales laid down by sections 21(1) of FOISA and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of this failure in response to the Applicant's application, given that a response has now been issued.

Appeal

Should either the Applicant or Falkirk 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.

Claire Stephen
Deputy Head of Enforcement

9 June 2021

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info