



Decision Notice 029/2024

Planning applications 2000 and 2001 – failure to respond

Applicant: The Applicant

Authority: Highland Council

Case Ref: 202400011

Summary

The Applicant asked the Authority for information about two planning applications dating back to 2000 and 2001. This decision finds that the Authority failed to respond to the requests 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 Authority failed to comply with the Applicant's requirements for review within the timescale set down by FOISA and the EIRs.

Background

1. The Applicant made two information requests to the Authority on 7 August 2023.
2. The Authority responded to the information requests on 3 October 2023.
3. On 4 October 2024, the Applicant wrote to the Authority requiring a review of its responses to his two information requests.
4. The Applicant did not receive a response to his requirements for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority'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. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 18 January 2024.
8. The Commissioner received submissions from the Authority on 25 January 2024. These submissions are considered below.
9. It is apparent from the terms of the requests that at least some of the information caught by them will be environmental information as defined by regulation 2(1) of the EIRs. In [Decision 218/2007 Transport Scotland¹](#), 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.
10. The Authority accepted that it had not responded to the Applicant's information requests within the timescale allowed under FOISA and the EIRs, attributing the failures to an increased volume of information requests and staff absences within the team handling such requests.
11. The Authority explained that the delay in providing a review response was caused by poor communication between the three teams involved, and a lack of assurance that the requested records could not be found. The Authority commented that the requests were for information, dating back to 2000 and 2001, which is not held in the Authority's online or internal digital systems as these were not in place (when the planning applications were allegedly submitted). The uncertainty in establishing whether the records were actually held led to a delay in providing responses.
12. 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.
13. It is a matter of fact that the Authority did not provide responses to the Applicant's requests 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.
14. 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.
15. It is a matter of fact that the Authority did not provide responses to the Applicant's requirements 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.
16. 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.

¹ <https://www.itspublicknowledge.info/decision-2182007>

17. The Authority responded to the Applicant's requirements for review on 25 January 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
18. The Commissioner notes that the Authority apologised to the Applicant, for its failings in handling the requests, in its responses dated 25 January 2024.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information requests made by the Applicant. In particular, the Authority failed to respond to the Applicant's requests for information and requirements for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs. Given that the Authority has now responded to the Applicant's requirements for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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.

Jill Walker
Deputy Head of Enforcement

1 March 2024