



Decision Notice 156/2024

Planning Applications (fences) – failure to respond

Applicant: The Applicant

Authority: Dundee City Council

Case Ref: 202400899

Summary

The Applicant asked the Authority for information (by area) as to the number of applications permitted to erect a fence and the number of applications refused permission between 2020 and 29 April 2024. This decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

1. The Applicant made an information request to the Authority on 29 April 2024.
2. The Authority responded to the information request on 30 April 2024.
3. On 31 May 2024, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review, but the Authority issued an acknowledgement on 4 June 2024.
5. The Applicant wrote to the Commissioner on 1 July 2024, stating that she 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 1 and 10 July 2024.
8. The Commissioner received submissions from the Authority on 24 July 2024. These submissions are considered below.
9. 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 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.
10. The Authority accepted that it had failed to respond to the Applicant's requirement for review within the timescale allowed under FOISA and the EIRs.
11. The Authority explained that the primary reason for the failure to respond to the Applicant's requirement for review was due to resources being called away at short notice to prepare for the general election, which had been called unexpectedly and at short notice.
12. 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.
13. It is a matter of fact that the Authority 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.
14. The Authority responded to the Applicant's requirement for review on 16 July 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application. The Commissioner also notes the assistance provided to the Applicant in disclosing the requested information in an accessible format by Local Authority Ward, rather than "area".
15. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

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

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 request made by the Applicant. In particular, the Authority 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. Given that the Authority has now responded to the Applicant's requirement 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

25 July 2024