

# Decision Notice

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**Decision 061/2015: Rona Hamilton and East Dunbartonshire Council**

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**Specification of works: failure to respond within statutory timescales**

Reference No: 201500564

Decision Date: 05 May 2015



Scottish Information  
Commissioner

## Summary

On 18 December 2014, Ms Hamilton asked East Dunbartonshire Council (the Council) for information about the specification for work and materials on which previously-supplied cost information was based, in relation to works to be carried out at a Primary School. This decision finds that the Council failed to respond to requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

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

## Background

Date	Action
18 December 2014	Ms Hamilton made an information request to the Council.
14 January 2015	The Council responded to the information request.
16 February 2015	Ms Hamilton wrote to the Council requiring a review of its decision.
	Ms Hamilton did not receive a response to her requirement for review.
24 March 2015	Ms Hamilton wrote to the Commissioner's Office, 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.
14 April 2015	The Council was notified in writing that an application had been received from Ms Hamilton and was invited to comment on the application.
28 April 2015	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*<sup>1</sup>, 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.

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

2. The Council accepted that it had not responded to Ms Hamilton's requirement for review within the timescale allowed. It explained that the requirement for review had been addressed to the original responder, rather than to the Freedom of Information Officer as advised in the response sent to Ms Hamilton. The Council also stated that because Ms Hamilton did not state that her email was a formal request for review, the Council did not treat it as such.
3. Although Ms Hamilton's requirement for review was addressed to another officer of the Council, it was also copied to the Council's generic freedom of information email address for a response. In recognising requirements for review, the Commissioner accepts that it is sufficient for a requester to express dissatisfaction with a response without specifically saying that a review is being requested.
4. The Commissioner notes that the Council has acknowledged that it was clear from Ms Hamilton's email that she was dissatisfied, and that it was mistaken in failing to treat her email as a requirement for review.
5. 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.
6. It is a matter of fact that the Council did not provide a response to Ms Hamilton'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.
7. The remainder of section 21 and regulation 16 sets 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/regulation 16.
8. The Commissioner notes that the Council has taken steps to ensure all correspondence relating to freedom of information will now be logged in its freedom of information tracking system.
9. The Council confirmed that it intends to issue a response to Ms Hamilton. This had not been done at the time of this decision.

## Decision

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The Commissioner finds that East Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Ms Hamilton. In particular, the Council failed to respond to Ms Hamilton's requirement for review within the timescales laid down by section 21(1) of FOISA/regulation 16(4) of the EIRs.

The Commissioner requires the Council to provide Ms Hamilton with a response to her requirement for review, by **Friday 19 June 2015**.

## **Appeal**

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Should either Ms Hamilton or East Dunbartonshire Council (the 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**

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If East Dunbartonshire 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**

**05 May 2015**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**