

Decision Notice



Decision 076/2014 Mr Brian Harris and East Dunbartonshire Council

Sports pitches at Lenzie Academy: failure to respond within statutory timescales

Reference No: 201400487
Decision Date: 31 March 2014

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

On 31 October 2013, Mr Harris asked East Dunbartonshire Council (the Council) for particular information relating to sports pitches at Lenzie Academy. This decision finds that 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 Harris's requirement for review within the timescale set down by FOISA and the EIRs.

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

Background

| Date | Action |
|-----------------|---|
| 31 October 2014 | Mr Harris made an information request to the Council. |
| | The Council did not respond to the information request. |
| 2 December 2014 | Mr Harris wrote to the Council requiring a review in respect of its failure to respond. |
| 6 January 2014 | Mr Harris received a partial response to his requirement for review. |
| 2 March 2014 | Mr Harris 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. |
| 10 March 2014 | The Council was notified in writing that an application had been received from Mr Harris and was invited to comment on the application. |
| 24 March 2014 | The Commissioner received submissions from the Council. These submissions are considered below. |



Commissioner's analysis and findings

1. The Council accepted that it had failed to respond to Mr Harris's request and provide a satisfactory response to his requirement for review within the statutory timescales. It explained that these failures were due to its misinterpretation of Mr Harris's request and confusion over which service held information relevant to the request.
2. The Council undertook to respond to Mr Harris's requirement for review within two days of providing its submission to the Commissioner. To date, the Commissioner has received no evidence that the Council has done this.
3. From the terms of the request, it is apparent 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.
4. 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.
5. It is a matter of fact that the Council did not provide a response to Mr Harris'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.
6. 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.
7. It is a matter of fact that the Council did not provide a full response to Mr Harris'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.
8. 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 proper 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 and regulation 16.

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



DECISION

The Commissioner finds that East Dunbartonshire Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or with the Environmental Information (Scotland) Regulations 2004 (the EIRs), in responding to the information request made by Mr Harris. In particular, it failed to respond to Mr Harris'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 requires the Council to provide a response to Mr Harris's requirement for review by 15 May 2014.



Appeal

Should either Mr Harris or East Dunbartonshire Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. The appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Deputy Head of Enforcement
31 March 2014