

# Decision Notice



Decision 114/2012 Mr Tony Reeman-Clark and Stirling Council

Failure to respond to requirement for review

Reference No: 201200969  
Decision Date: 6 July 2012

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**Margaret Keyse**

Acting Scottish Information  
Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS



## Summary

This decision considers whether Stirling Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to a requirement for review made by Mr Reeman-Clark.

## Background

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1. On 10 January 2012, Mr Reeman-Clark wrote to the Council requesting certain specified information.
2. The Council responded on 20 February 2012. It informed Mr Reeman-Clark that his request fell to be dealt with in terms of the EIRs, applying section 39(2) of FOISA. The Council provided him with some information, while informing him that other information was excepted from disclosure in terms of regulations 10(5)(d) and 11(2) of the EIRs.
3. On 6 April 2012, Mr Reeman-Clark wrote to the Council requiring a review in respect of its response.
4. Mr Reeman-Clark did not receive a response to his requirement for review and, on 17 May 2012, wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
5. The application was validated by establishing that Mr Reeman-Clark had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its failure to respond to that request. The case was then allocated to an investigating officer.

## Investigation

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6. On 20 June 2012, the Council was notified in writing that an application had been received from Mr Reeman-Clark and was invited to comment on the application, as required by section 49(3)(a) of FOISA.



7. The Council responded on 4 July 2012, providing a copy of a letter it had sent Mr Reeman-Clark. The letter apologised for the Council's failure to respond within the appropriate timeframe. The Council explained that further enquiry was necessary to complete the review, and that a response would be issued by 20 July 2012.

## Commissioner's analysis and findings

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8. In ***Decision 218/2007 Professor A D Hawkins and Transport Scotland*** 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. This decision is concerned only with the Council's compliance with the statutory timescale for responding to the Mr Reeman-Clark's requirement for review. Having considered the type of the information requested by Mr Reeman-Clark's, the Commissioner considers it likely that the information would properly be considered environmental information under the EIRs. He has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
10. Section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt to comply with a requirement for a review, subject to exceptions which are not relevant to this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
11. Since the Council did not provide a response to Mr Reeman-Clark's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
12. While the Commissioner notes the Council's intention to provide a response to Mr Reeman-Clark's requirement for review by 20 July 2012 (an intention which she hopes the Council will fulfill), she requires the Council to respond to the requirement for review in accordance with section 21 of FOISA and regulation 16 of the EIRs by 20 August 2012.



## DECISION

The Commissioner finds that Stirling Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) 2004 (the EIRs) in dealing with the information request made by Mr Reeman-Clark, in particular by failing to respond to Mr Reeman-Clark's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner therefore requires the Council to comply with Mr Reeman-Clark's requirement for review, in accordance with the requirements of section 21 of FOISA and regulation 16 of the EIRs, by 20 August 2012.

## Appeal

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Should either Mr Reeman-Clark or Stirling Council wish to appeal against this decision, there is an 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 notice.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**6 July 2012**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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#### The Environmental Information (Scotland) Regulations 2004

##### 16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

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- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

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