

Decision Notice



Decision 132/2013 Ms Rona Hamilton and East Dunbartonshire Council

Failure to respond to requirement for review

Reference No: 201301169
Decision Date: 08 July 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether East Dunbartonshire 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 an information request made by Ms Rona Hamilton.

Background

1. On 8 February 2013 and 15 March 2013, Ms Hamilton wrote to the Council requesting certain specified information.
2. The Council responded to both requests, on 28 February 2013 and 28 March 2013 respectively.
3. On 28 March 2013, Ms Hamilton wrote to the Council requesting a review of her second request (dated 15 March 2013).
4. Ms Hamilton did not receive a response to her requirement for review and on 16 May 2013 wrote to the Commissioner's Office, stating that she 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 Ms Hamilton 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 response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 28 May 2013, the Council was notified in writing that an application had been received from Ms Hamilton and was invited to comment on the application.
7. The Council responded on 11 June 2013, confirming that it had failed to undertake a review whilst explaining there had been a mix up with other requests made on the same subject. It issued a review decision to Ms Hamilton on 14 June 2013. The Council's submissions are considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. 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. In terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
9. This decision is concerned only with the Council's compliance with the technical requirements for responding to Ms Hamilton's requirement for review. Having considered the terms of Ms Hamilton's request, the Commissioner considers it likely that any information falling within its scope would properly be considered environmental information under the EIRs. She 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 Scottish public authorities a maximum of 20 working days to comply with a requirement for review, from the date of its receipt. (This is subject to certain exceptions which are not relevant in this case.) In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
11. The Council explained it had received an unprecedented number of enquiries as a result of proposed alterations to its primary school estate. The volume of enquiries covered a small number of subjects from the same enquirers, and unfortunately it had overlooked this particular requirement for review. The Council apologised for not responding within the permitted 20 working days.
12. The Commissioner notes that the Council has now issued a review decision to Ms Hamilton.
13. Given that the Council did not provide a response to Ms Hamilton'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.

DECISION

The Commissioner finds that East Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the request made by Ms Rona Hamilton.

Specifically, the Council failed to respond to Ms Hamilton's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

As the Council has now responded to the requirement for review from Ms Hamilton, the Commissioner does not require the Council to take any further steps in relation to this failure.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



Appeal

Should either Ms Hamilton or East Dunbartonshire 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.

Alison Davies
Deputy Head of Enforcement
08 July 2013



Appendix

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.

...

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.

...

The Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (2) The duty under paragraph (1)-
- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and

...

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.



...

- (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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