

Decision Notice



Decision 141/2013 Paul Dudman and East Dunbartonshire Council

Failure to respond to request and requirement for review

Reference No: 201301396
Decision Date: 17 July 2013

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Rosemary Agnew
Scottish Information Commissioner

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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)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to information request made by Paul Dudman.

Background

1. On 4 April 2013, Mr Dudman wrote to the Council requesting certain specified information.
2. Mr Dudman received no response to his request for information.
3. On 7 May 2013, Mr Dudman wrote to the Council requesting a review in respect of the Council's failure to respond.
4. Mr Dudman did not receive a response to his requirement for review and on 16 June 2013 wrote to the Commissioner's Office, 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 Dudman 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 June 2013, the Council was notified in writing that an application had been received from Mr Dudman and was invited to comment on the application.
7. The Council responded on 15 July 2013. It acknowledged that it had not complied with the relevant timescales, but confirmed that it had now responded to Mr Dudman. It provided a copy of this response, which Mr Dudman confirmed he had received.



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 was 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 Mr Dudman's request. Having considered the terms of the 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 issues raised by this case in terms of both FOISA and the EIRs.
10. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 5(2)(a) of the EIRs.
11. Since the Council did not provide a response to Mr Dudman's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
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, 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.
13. Since the Council did not provide a response to Mr Dudman'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.
14. Given that the Council has now responded to Mr Dudman's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Dudman's application.

¹ <http://www.itspublicknowledge.info/UploadedFiles/Decision218-2007.pdf>



DECISION

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 dealing with the information request made by Mr Dudman, in particular by failing to respond to Mr Dudman's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA/regulation 5(2) and 16(4) of the EIRs.

Given that the Council has now responded to Mr Dudman's requirement for review, the Commissioner does not require the Council to take any action in response to these failures.

Appeal

Should either Mr Dudman 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.

Margaret Keyse
Head of Enforcement
17 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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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 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 the 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 dated 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.

...