

Decision Notice

Decision 146/2015: Mr Donald Wright and East Dunbartonshire Council

Inspection and maintenance records for a specified street:

Failure to respond within statutory timescales

Reference No: 201501486

Decision Date: 18 September 2015



Scottish Information
Commissioner

Summary

On 4 June 2015, Watermans Solicitors, on behalf of their client Mr Donald Wright, asked East Dunbartonshire Council (the Council) for information about maintenance and inspection records for a specified street. 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 Wright's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
4 June 2015	Mr Wright made an information request to the Council.
	The Council did not respond to the information request.
6 July 2015	Mr Wright wrote to the Council, requiring a review in respect of its failure to respond.
	Mr Wright did not receive a response to his requirement for review.
13 August 2015	Mr Wright wrote to the Commissioner, 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.
24 August 2015	The Council was notified in writing that an application had been received from Mr Wright and was invited to comment on the application.
9 September 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*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 the EIRs.

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

2. 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.
3. It is a matter of fact that the Council did not provide a response to Mr Wright'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.
4. 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.
5. It is a matter of fact that the Council did not provide a response to Mr Wright'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.
6. 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 and regulation 16.
7. The Council accepted that it had not responded to Mr Wright's information request or requirement for review within the timescales allowed and confirmed a response would be sent to Mr Wright. This had not been done at the time of this decision.
8. The Commissioner notes that the Council intends to apologise to Mr Wright for its failure to comply. She would encourage it to do so.
9. Given that the Council has now responded to Mr Wright's requirement for review, the Commissioner does not require it to take any further action in relation to his application.

Decision

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), and with the Environmental Information (Scotland) Regulations 2004 (the EIRs), in responding to the information request made by Mr Wright. In particular, the Council failed to respond to Mr Wright's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mr Wright's application, given that a review response has now been issued.

Appeal

Should either Mr Wright 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. Any such appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Deputy Head of Enforcement

18 September 2015

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