

Decision Notice

Decision 170/2016: Ms W and West Lothian Council

Dogs and Dog Waste Bins: failure to respond within statutory timescales

Reference No: 201601041

Decision Date: 1 August 2016



Scottish Information
Commissioner

Summary

On 27 February 2016, Ms W asked West Lothian Council (the Council) for various information ranging from dog waste bins to dog wardens employed by the Council. This decision finds that the Council failed to respond to Ms W's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
27 February 2016	Ms W made an information request to the Council.
24 March 2016	The Council responded to the information request.
24 March 2016	Ms W wrote to the Council requiring a review of its decision.
24 March 2016	Ms W received an acknowledgement to her requirement for review.
	Ms W did not receive a response to her requirement for review.
30 May 2016	Ms W wrote to the Commissioner's Office, stating that she was dissatisfied with the Council's failure 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.
6 June 2016	The Council wrote to Ms W to ask her to clarify the requirement for review. The Council were not aware of Ms W's application to the Commissioner at this time.
10 June 2016	The Council was notified in writing that an application had been received from Ms W and was invited to comment on the application.
28 July 2016	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 EIRs.

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

2. 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. 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.
3. It is a matter of fact that the Council did not provide a response to Ms W'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.
4. The Council acknowledged that the review response had not been responded to in time.
5. It explained that, since 2016, it had received a number information requests and subject access requests from Ms W, that were identical to or similar to previous requests or were difficult to understand.
6. The Council further explained that this had had an impact on their resources in dealing with the requests and the same requester and the reason why the review had not been responded to in time.
7. As the Council responded to Ms W's requirement for review on 21 June 2016 via the 'Whatdotheyknow' website, the Commissioner does not require it to take any further action in relation to Ms W's application. A copy of the review response was provided to the Commissioner.
8. The Commissioner notes that the Council apologised to Ms W in the email that accompanied the review response of 21 June 2016, for its failure to comply.

Decision

The Commissioner finds that West Lothian 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 responding to Ms W's requirement for review. In particular, the Council failed to respond to Ms W's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

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

Appeal

Should either Ms W or West Lothian Council (the 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.

Margaret Keyse
Head of Enforcement

1 August 2016

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