

Decision Notice

Decision 198/2014: Mr Michael McGovern and Glasgow City Council

Municipal solid waste collection and disposal: failure to respond within statutory timescales

Reference No: 201402081

Decision Date: 10 September 2014



Scottish Information
Commissioner

Summary

On 17 June 2014, Mr McGovern asked Glasgow City Council (the Council) for information about municipal solid waste collection and disposal. 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 McGovern's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
17 June 2014	Mr McGovern made an information request to the Council.
17 June 2014	Although the Council acknowledged the information request, it did not provide Mr McGovern with a response.
21 July 2014	Mr McGovern wrote to the Council, requiring a review in respect of its failure to respond.
21 July 2014	Again, although Mr McGovern received an acknowledgement, he did not receive a response to his requirement for review.
21 August 2014	Mr McGovern wrote to the Commissioner's Office, 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.
25 August 2014	The Council was notified in writing that an application had been received from Mr McGovern and was invited to comment on the application.
8 September 2014	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 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. The Council stated that it had attempted to respond to Mr McGovern's request on 20 June 2014, but acknowledged that there was an error in the email address used. In the circumstances, it is a matter of fact that the Council did not provide a response to Mr McGovern's request for information within 20 working days and 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. The Council acknowledged that it had received Mr McGovern's requirement for review, but explained that it had not reached the appropriate staff within the organisation. It is a matter of fact that the Council did not provide a response to Mr McGovern'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. On 25 August 2014 the Council sent Mr McGovern a copy of the response originally emailed to him on 20 June 2014. Having considered all the relevant correspondence, the Commissioner cannot accept this as a response to Mr McGovern's requirement for review. In the circumstances narrated above, Mr McGovern is entitled to such a response. The Commissioner therefore requires the Council to carry out a review and communicate the outcome to Mr McGovern, in accordance section 21 of FOISA and regulation 16 of the EIRs, by **Monday 27 October 2014**.

Decision

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr McGovern. In particular, the Council failed to respond to Mr McGovern'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 requires the Ministers to carry out a review and communicate the outcome to Mr McGovern, in accordance with section 16 of FOISA and regulation 16 of the EIRs, by **Monday 27 October 2014**.

Appeal

Should either Mr McGovern or Glasgow City 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

10 September 2014

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