

Decision Notice

Decision 227/2016: City of Brechin & District Community Council and Angus Council

Values of ground: failure to respond within statutory timescales

Reference No: 201601804

Decision Date: 25 October 2016



Scottish Information
Commissioner

Summary

On 6 July 2016, City of Brechin & District Community Council (Brechin Community Council) asked Angus Council (the Council) for the values of seven specified areas forming part of Brechin Common Good, along with maps for these areas. 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 Brechin Community Council's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
6 July 2016	Brechin Community Council made an information request to the Council.
7 July 2016	Although the Council acknowledged the information request, it did not provide a response.
18 August 2016	Brechin Community Council wrote to the Council, requiring a review in respect of its failure to respond.
19 August 2016	Again, although the Council acknowledged the requirement for review, Brechin Community Council did not receive a response.
3 October 2016	Brechin Community Council wrote to the Commissioner's Office, stating that it 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.
5 October 2016	Brechin Community Council informed the Commissioner that the Council responded on 4 October 2016, but confirmed on 12 October 2016 that it wanted the Commissioner to make a decision.
13 October 2016	The Council was notified in writing that an application had been received from Brechin Community Council and was invited to comment on the application.
20 October 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

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

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.

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 Brechin Community Council'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 Brechin Community Council'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 Council explained that the delay was due to difficulties in locating the information, including historic plans.
7. The Council acknowledged that it had failed to respond on time and explained that it had recently implemented changes in personnel dealing with reviews. It confirmed that it was taking steps to deal with late responses, including quarterly reporting to senior management. The Commissioner welcomes the steps being taken.
8. As the Council responded to Brechin Community Council's requirement for review on 4 October 2016, the Commissioner does not require it to take any further action in relation to Brechin Community Council's application.
9. The Commissioner notes that the Council has apologised to Brechin Community Council for its failure to respond.

Decision

The Commissioner finds that Angus 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 City of Brechin & District Community Council (Brechin Community Council). In particular, the Council failed to respond to Brechin Community Council's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Brechin Community Council's application, given that a response was issued on 4 October 2016.

Appeal

Should either City of Brechin & District Community Council (Brechin Community Council) or Angus 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.

Enforcement

If Angus Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

25 October 2016

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info