

Decision Notice



Decision 236/2013 Firrhill Community Council and City of Edinburgh Council

Whether there was a failure to respond to requirement for review

Reference No: 201302366

Decision Date: 24 October 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether City of Edinburgh 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 an information request made by Firrhill Community Council (FCC).

Background

1. On 4 August 2013, FCC wrote to the Council requesting certain specified information.
2. Although the Council acknowledged the request on 6 August 2013, FCC received no response to its request.
3. On 3 September 2013, FCC wrote to the Council requesting a review of its failure to respond.
4. FCC did not receive a response to its requirement for review and, on 8 October 2013, wrote to the Commissioner's Office, stating that it was dissatisfied with the Council's failure to respond to its request or requirement for review 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 FCC made a request for information to a Scottish public authority and 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 18 October 2013, the Council was notified in writing that an application had been received from FCC and was invited to comment on the application.



7. The Council responded later the same day, advising the Commissioner that it had responded to FCC on 1 October 2013. It provided a copy of its response to the investigating officer and sent a copy to FCC. (FCC has confirmed it received this copy.) The Council's submissions are considered below.

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 is 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.

Information Request

9. 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.
10. Since the Council did not provide a response to FCC'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.

Requirement for review

11. FCC advised the Commissioner that it had not received a response to its requirement for review within the timescales set down by FOISA and the EIRs. However, the Council advised the Commissioner that a response had been issued to FCC on 1 October 2013, i.e. within the relevant timescales.
12. To establish receipt of the review response, the Council asked FCC to check if its spam folder contained the review response sent on 1 October 2013. FCC checked its emails again, and confirmed that the response had not been received. As a result, the investigating officer asked the Council to provide documentary evidence that it had sent the email to FCC. The Council was able to provide the Commissioner with a screen shot of the email it sent to FCC on 1 October 2013, showing the time it was sent, along with the PDF attachments. The email address used was correct.
13. The Commissioner is required to come to a conclusion, on the balance of probabilities, as to whether the email was in fact sent on 1 October 2013. In the light of the information provided by the Council, she is satisfied that it was. As such, the Commissioner has concluded that the Council complied with section 21(1) of FOISA and regulation 16(4) of the EIRs in responding to FCC's requirement for review.

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



DECISION

The Commissioner finds that City of Edinburgh Council (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) by failing to respond to Firrhill Community Council's (FCC's) request for information within the respective timescales laid down by sections 10(1) of FOISA and regulation 5(2) of the EIRs.

However, the Commissioner is satisfied that that the Council responded to FCC's requirement for review within the timescales laid down by the legislation.

Given that the review response has now been received by FCC, the Commissioner does not require the Council to take any action in response to its failure to respond to FCC's initial request on time.

Appeal

Should either Firrhill Community Council or City of Edinburgh 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
24 October 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-

...

The Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

- (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 date of receipt of the request; and

...

16 Review by Scottish public authority

...

- (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.

...