

Decision Notice

Decision 269/2016: Mrs M Laing and Dundee City Council

Information on traffic restrictions: failure to respond within statutory timescales

Reference No: 201602130

Decision Date: 15 December 2016



Scottish Information
Commissioner

Summary

Dundee City Council (the Council) was asked for information concerning temporary traffic restrictions. The decision finds that the Council failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
26 July 2016	Mrs Laing made an information request to the Council.
	The Council did not respond to the information request.
7 October 2016	Mrs Laing wrote to the Council, requiring a review in respect of its failure to respond.
	Mrs Laing did not receive a response to her requirement for review.
12 November 2016	Mrs Laing wrote to the Commissioner's Office, stating that she 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 November 2016	The Council was notified in writing that an application had been received from Mrs Laing and was invited to comment on the application.
25 November 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 may 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.
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

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

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 Mrs Laing'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 Mrs Laing'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 responded to Mrs Laing's requirement for review on 11 November 2016, so the Commissioner does not require it to take any further action in relation to Mrs Laing's application. It would appear that Mrs Laing had not received this response at the time she submitted her application to the Commissioner on 12 November 2016.
7. The Council explained that it had also received a request on 3 August 2016, made on Mrs Laing's behalf by her solicitor, seeking information on the same subject. The Council had responded direct to her solicitor. It would appear that some confusion had arisen and, having provided a response to the request made on Mrs Laing's behalf by her solicitor, the Council did not reply direct to Mrs Laing in response to her own request.
8. The Council explained that its response to Mrs Laing's requirement for review was late as a result of an oversight and apologised for this delay. The Council sent Mrs Laing a further copy of its response of 11 November 2016 on 25 November 2016.
9. Given that the Council has now responded to Mrs Laing's requirement for review, the Commissioner does not require it to take any further action in relation to Mrs Laing's application

Decision

The Commissioner finds that Dundee 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 Mrs Laing. In particular, the Council failed to respond to Mrs Laing'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 these failures, in response to Mrs Laing's application, given that a response to her requirement for review was issued on **11 November 2016**.

Appeal

Should either Mrs Laing or Dundee 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

15 December 2016

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