

Decision Notice



Decision 133/2011 Mr Christopher Collins and City of Edinburgh Council

Failure to respond to requirements for review

Reference No: 201101005

Decision Date: 5 July 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether the City of Edinburgh Council (the Council) complied with the technical requirements of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to two separate information requests made by Mr Collins.

Background

Mr Collins' first information request

1. On 6 August 2010, Mr Collins emailed the Council requesting information held by the Council on containerisation of waste in the World Heritage Site.
2. The Council responded on 3 September 2010, providing some information to Mr Collins. The Council also provided some additional information to Mr Collins on 22 September 2010.
3. On 5 October 2010, Mr Collins emailed the Council requesting a review of its decision. In particular, Mr Collins considered that the Council ought to hold more information than had been disclosed to him.

Mr Collins' second information request

4. On 24 January 2011, Mr Collins wrote to the Council requesting information relating to the competitive tendering of waste services.
5. The Council responded on 28 March 2011 providing some information to Mr Collins, but withholding the remainder on the basis that it considered the information to be excepted from disclosure in terms of regulation 10(4)(e) and regulation 10(5)(e) of the EIRs.
6. On 5 April 2011, Mr Collins emailed the Council requesting a review of its decision. In particular, Mr Collins disagreed with the Council's application of regulation 10(4)(e) of the EIRs.
7. Mr Collins did not receive a response to either of his requests for review and on 2 June 2011 wrote to the Commissioner, stating that he was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (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.



8. In terms of section 47(4)(b) of FOISA (which also applies to the EIRs by virtue of regulation 17(1) of the EIRs), an application to the Commissioner made under section 47(1)(b) must be made within six months after the period allowed in section 21(1) of FOISA of the applicant receiving the response to their request for review. In this case, the application made by Mr Collins (insofar as it related to his first information request) was submitted to the Commissioner outwith the six month period.
9. The Commissioner may, however, by virtue of section 47(5) of FOISA, consider an application after the expiry of the six month period if he considers it appropriate to do so. In this case, and after having considered the circumstances surrounding Mr Collins' application, the Commissioner applied the discretion granted to him under section 47(5) of FOISA and agreed to consider Mr Collins' application in full.
10. The application was then validated by establishing that Mr Collins had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

11. On 14 June 2011, the Council was notified in writing that an application had been received from Mr Collins and was invited to comment on the application.
12. The Council responded on 28 June 2011. It acknowledged that it had failed to respond to Mr Collins' requirements for review.

Commissioner's analysis and findings

13. Regulation 16(4) of the EIRs gives a Scottish public authority a maximum of 20 working days following the date of receipt of the requirement to notify the applicant of its decision. Other parts of regulation 16 (particularly paragraphs (3) and (5)) govern the review process and the giving of notice to the applicant (see Appendix below).
14. In this case, the Commissioner finds that by failing to carry out reviews and notify Mr Collins of the outcomes, the Council failed to comply with the requirements of regulation 16(4) of the EIRs.
15. The Commissioner now requires the Council to deal with Mr Collins' requirements for review in accordance with the requirements of regulation 16(3) and (4) of the EIRs.



DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information requests made by Mr Collins, in particular by failing to respond to Mr Collins' requirements for review within the timescales laid down by regulation 16(4) of the EIRs.

The Commissioner therefore requires the Council to deal with Mr Collins' requirements for review in accordance with the requirements of regulation 16(3) and (4) of the EIRs. The Commissioner requires the Council to do so by 19 August 2011.

Appeal

Should either Mr Collins or the Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
5 July 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

47 Application for decision by Commissioner

...

- (4) Subject to subsection (5), an application to the Commissioner under subsection (1) must be made-

...

(b) where the application concerns a matter mentioned in paragraph (b) of that subsection, before the expiry of six months after the period allowed in section 21(1) for complying with a requirement for review has elapsed.

- (5) The Commissioner may consider an application under subsection (1) made after the expiry of the time allowed by subsection (4) for the making of that application if, in the opinion of the Commissioner, it is appropriate to do so.

...

The Environmental Information (Scotland) Regulations 2004

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.
- (3) The Scottish public authority shall on receipt of such representations-



- (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (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.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.