

Decision Notice



Decision 147/2012 Mr Colin Mortimer and City of Edinburgh Council

Failure to respond to request and requirement for review

Reference No: 201201510
Decision Date: 31 August 2012

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Rosemary Agnew
Scottish Information Commissioner

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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) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr Mortimer.

Background

1. On 19 May 2012, Mr Mortimer emailed the Council requesting information pertaining to statutory repair notices for work carried out to his property.
2. Mr Mortimer received no response to his request for information other than an acknowledgement email on 21 May 2012, in which the Council advised that it would deal with the request under the EIRs.
3. On 5 July 2012, Mr Mortimer emailed the Council noting that he had not received any information despite the 20 working day period for response having passed. He asked whether there was a problem in processing the request, and indicated that he would appreciate an update. Having reviewed the content of this email, the Commissioner is satisfied that it constituted a request for the Council to review its failure to respond to Mr Mortimer's request within the timescales allowed by FOISA and the EIRs.
4. Mr Mortimer did not receive a response to this requirement for review other than an acknowledgement email on 10 July 2012, which apologised for the delay.
5. On 8 August 2012, Mr Mortimer wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond to his request and request 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.
6. The application was validated by establishing that Mr Mortimer had made a request for information to a Scottish public authority and had 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

7. On 14 August 2012, the Council was notified in writing that an application had been received from Mr Mortimer and was invited to comment on the application.
8. The Council responded on 30 August and its submissions are considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In Decision 218/2007 Professor A D Hawkins and Transport Scotland 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.
10. This decision is concerned only with the Council's compliance with the statutory timescales for responding to the Mr Mortimer's initial request and requirement for review. Having considered the type of the information requested by Mr Mortimer, the Commissioner considers it likely that the information would properly be considered environmental information. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after 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.
12. Since the Council did not provide a response to Mr Mortimer'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.
13. Section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt to comply with a requirement for a review, again subject to exceptions which are not relevant to this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
14. Since the Council did not provide a response to Mr Mortimer's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
15. The remainder of section 21 and regulation 16 set out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements and she now requires a review to be carried out in accordance with them.



16. In its submissions the Council stated that Mr Mortimer's email of 5 July 2012 had been treated by the Council as a request for an update rather than a requirement for a review. The Council went on to state that the information that Mr Mortimer had asked for needed be requested from the consultants involved in the project, which had resulted in the delay.
17. The Council added that the delay was also partly due to the high volume and complexity of cases being dealt with by the Council's Property Conservation Department.
18. The Council apologised for its failure to respond timeously and advised the Commissioner that the department concerned had reviewed its procedures to ensure that information requests are dealt with timeously in the future.
19. While accepting that the Council's Property Conservation Department has been dealing with a high volume of complex cases recently the Commissioner must emphasise the importance of public authorities prioritising their workloads to ensure compliance with the mandatory timescales in answering information requests.
20. In particular the Commissioner is concerned that in this case the Council failed to recognise Mr Mortimer's email of 5 July 2012 as a requirement for review and to treat it as such. She is of the view that the Council should be vigilant in this respect to ensure that no further review requirements are overlooked in the future.

DECISION

The Commissioner finds that City of Edinburgh Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or with the Environmental Information (Scotland) Regulations 2004 (the EIRs), in dealing with the information request made by Mr Mortimer.

Specifically, the Council failed to respond (i) to Mr Mortimer's request for information within the timescale laid down by section 10(1) of FOISA and regulation 5(2)(a) of the EIRs, and (ii) to Mr Mortimer's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner therefore requires the Council to respond to Mr Mortimer's requirement for review, in accordance with the requirements of section 21 of FOISA and regulation 16 of the EIRs, by 15 October 2012.



Appeal

Should either Mr Mortimer or City of Edinburgh 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.

Claire Sigsworth
Deputy Head of Enforcement
31 August 2012



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-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...



The Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (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

- (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.

...

- (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.

...