

Decision Notice

Decision 212/2014: Mr Callum Smith and Glasgow City Council

Change of building use: failure to respond within statutory timescales

Reference No: 201402233

Decision Date: 03 October 2014



Scottish Information
Commissioner

Summary

On 18 June 2014, Mr Smith asked Glasgow City Council (the Council) for information about the change of use of a specific building. 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 Mr Smith's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
18 June 2014	Mr Smith made an information request to the Council.
	The Council did not respond to the information request.
31 July 2014	Mr Smith wrote to the Council, requiring a review in respect of its failure to respond.
1 August 2014	Although Mr Smith received an acknowledgement, he did not receive a response to his requirement for review.
10 September 2014	Mr Smith wrote to the Commissioner's Office, stating that he 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.
16 September 2014	The Council was notified in writing that an application had been received from Mr Smith and was invited to comment on the application.
25 September 2014	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 Mr Smith'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. The Council acknowledged that it had received Mr Smith's request for review, but explained the particular staffing issues which had impaired its ability to carry out a review timeously. It is a matter of fact that the Council did not provide a response to Mr Smith'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 Mr Smith's requirement for review on 25 September 2014, so the Commissioner does not require it to take any further action in relation to Mr Smith's application.

Decision

The Commissioner finds that Glasgow City 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 Mr Smith. In particular, the Council failed to respond to Mr Smith's request for information and his 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.

Given that the Council has now provided Mr Smith with a response to his requirement for review, the Commissioner does not require the Council to take any action in respect of these failures, in response to Mr Smith's request.

Appeal

Should either Mr Smith or 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.

Euan McCulloch
Deputy Head of Enforcement

03 October 2014

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