

Decision Notice



Decision 066/2013 Firrhill Community Council and City of Edinburgh Council

Failure to respond to requirement for review

Reference No: 201300622
Decision Date: 15 April 2013

www.itspublicknowledge.info

Rosemary Agnew
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 Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Firrhill Community Council (FCC) on 11 December 2012.

Background

1. On 11 December 2012, FCC wrote to the Council requesting certain specified information.
2. The Council responded on 24 December 2012.
3. On 27 January 2013, FCC wrote to the Council requesting a review of its decision.
4. FCC did not receive a response to its requirement for review and, on 3 March 2013, wrote to the Commissioner's Office, stating that it was dissatisfied with that failure and applying 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 12 March 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 on 28 March 2013, explaining that the request for information was never logged by its FOI team. Instead, the Council explained, the request was answered through ongoing communication between members of FCC and the relevant service area directly.



8. The Council explained that the service area had continued communication with FCC about the nature and scope of its request. The service area was currently trying to estimate the amount of work involved in collecting the information.
9. The Council was unsure whether a response to FCC would assist progress on the case. However, it was apparent from the submissions received from both parties that FCC's requirement for review had not been responded to (and indeed that no review had been carried out).

Commissioner's analysis and findings

10. 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.
11. This decision is concerned only with the Council's compliance with the technical requirements for responding to FCC's requirement for review. Having considered the terms of FCC's request, the Commissioner considers it likely that any information falling within its scope would properly be considered environmental information under the EIRs. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
12. In relation to FCC's requirement for review, 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. This is subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
13. Since the Council did not provide a response to FCC'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.
14. 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. The Commissioner now requires a review to be carried out in accordance with them.
15. The Commissioner acknowledges that the Council tried to address FCC's request through communication involving the relevant service area directly. Nonetheless, she would remind the Council that FOISA and the EIRs contain obligations to respond to valid requests for information and requirements for review in accordance with their respective regimes.

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



DECISION

The Commissioner finds that the City of Edinburgh Council (the 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), by failing to respond to the requirement for review made by Firrhill Community Council within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs (and otherwise in accordance with section 21 and regulation 16).

The Commissioner therefore requires the Council to provide a response to Firrhill Community Council's requirement for review, as required by section 21 and regulation 16, by 30 May 2013.

Appeal

Should either Firrhill Community Council or the 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.

Euan McCulloch
Deputy Head of Enforcement
15 April 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...

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.

...