

Decision Notice

Decision 130/2019: Mr M and Glasgow City Council

Records relating to a café: failure to respond within statutory timescales

Reference No: 201901239

Decision Date: 27 August 2019



Scottish Information
Commissioner

Summary

On 4 October 2018, Mr M asked Glasgow City Council (the Council) for information in records relating to a café. This decision finds that the Council failed to comply with Mr M's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
4 October 2018	Mr M made an information request the Council.
31 October 2018	The Council responded to the information request.
24 December 2018	Mr M wrote to the Council, requiring a review of its decision.
	Mr M did not receive a response to his requirement for review.
16 June 2019	Mr M 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.
6 August 2019	The Council was notified in writing that an application had been received from Mr M and was invited to comment on the application.
19 August 2019	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 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 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 qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.

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

3. It is a matter of fact that the Council did not provide a response to Mr M'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.
4. 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: he now requires a review to be carried out in accordance with section 21 and regulation 16.
5. The Council has explained to the Commissioner that Mr M's request for a review was not logged due to an administrative error, believed to be an isolated incident. The Commissioner notes that the Council is in the process of carrying out a review.

Decision

The Commissioner finds that Glasgow 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 Mr M. In particular, the Council failed to respond to Mr M's requirement for review within the timescales laid down by sections 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Council to carry out a review and communicate the outcome to Mr M, in accordance with section 21 and regulation 16, by 11 October 2019.

Appeal

Should either Mr M 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Claire Stephen
Deputy Head of Enforcement

27 August 2019

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