

Decision Notice 040/2020

Council employee notes on planning application: failure to respond

Applicant: The Applicant

Public authority: South Ayrshire Council

Case Ref: 202000189



Summary

On 9 September 2019, the Applicant asked South Ayrshire Council (the Council) for all notes made by Council employees in relation to a specified planning application. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
9 September 2019	The Applicant made an information request to the Council.
18 September 2019	The Council responded to the information request.
29 September 2019	The Applicant wrote to the Council, requiring a review of its decision.
	The Applicant did not receive a response to his requirement for review.
5 February 2020	The Applicant wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure 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.
11 February 2020	The Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
21 February 2020	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. The Council acknowledged that it had received the Applicant's requirement for review and that it had failed to respond within the timescale allowed under FOISA and the EIRs. It explained at that time there were several conflicting priorities, due to factors including the general election and unplanned staff absences.

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

3. The Council recognised that this level of service was not acceptable and took steps to ensure that the Applicant was provided with a response. The Commissioner was provided with a copy of it.
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. 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. It is a matter of fact that the Council did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
6. The Council responded to the Applicant's requirement for review on 21 February, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
7. The Commissioner notes the apology given to the Applicant for its failure to comply.

Decision

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

The Commissioner does not require the Council to take any action in respect of this failure, in response to the Applicant's application, given that a response has now been issued.

Appeal

Should either the Applicant or South Ayrshire 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

27 February 2020

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