

Decision Notice

Decision 136/2019: The Applicant and Midlothian Council

New Primary School: failure to respond within statutory timescales

Reference No: 201901281

Decision Date: 18 September 2019



Scottish Information
Commissioner

Summary

Midlothian Council (the Council) was asked for details relating to a new primary school. In particular:

- All correspondence regarding the need for or provision of a new primary school in Easthouses/Kippielaw area.
- Meetings/telephone calls between Council staff and Gladman Developments

This decision finds that the Council failed to comply with the Applicant'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).

Background

Date	Action
6 May 2019	The Applicant made an information request to the Council.
31 May 2019	The Council responded to the information request.
21 June 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.
31 July 2019	The Applicant wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond to his requirement for review 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.
1 August 2019	The Council was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
21 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 may 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.

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

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. 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.
3. 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 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 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
5. The Council responded to the Applicant's requirement for review on 9 September 2019, so the Commissioner does not require them to take any further action in relation to their application.
6. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that Midlothian 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 sections 21(1) of FOISA and regulation 16(4) of the EIRs.

Appeal

Should either the Applicant or Midlothian Council (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 Midlothian Council (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.

Euan McCulloch
Deputy Head of Enforcement

18 September 2019

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