

Decision Notice



Decision 047/2009 Mr John Church and Highland Council

Failure to respond to request for review

Reference No: 200900336

Decision Date: 15 April 2009

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether Highland Council (the Council) complied with the technical requirements of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr Church.

Background

1. On 28 November 2008, Mr Church wrote to the Council requesting information relating to a planning application and septic tank requirements and in particular how many other private house sites within the Highland Council area had been asked to demonstrate that they had sufficient turning space on-site for the septic tank emptying lorry.
2. The Council responded on 18 December 2008, providing Mr Church with some of the information requested.
3. On 9 January 2009, Mr Church wrote to the Council requesting a review of its decision. In particular, Mr Church was not satisfied that he had been provided with the number of private house sites with the Council's area which had been asked to demonstrate that sufficient turning space was available on-site for the septic tank emptying lorry.
4. Mr Church did not receive a response to his request for review and on 17 February 2009 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner 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 Mr Church had made a request for information to a Scottish public authority and had 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 25 February 2009, the Council was notified in writing that an application had been received from Mr Church and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Council responded on 11 March 2009, acknowledging that it had failed to respond to Mr Church's request for review and apologising for this failure. The Council stated that it was currently preparing a formal response to Mr Church's request for a review. This was finally provided on 23 March 2009.

Commissioner's analysis and findings

8. Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days from receipt of an applicant's representations to notify the applicant of its decision on a review.
9. The Commissioner finds that the Council failed to notify Mr Church of its decision on review within the 20 working days allowed for under regulation 16(4) of the EIRs.
10. The Commissioner notes that the Council has now responded to Mr Church's request for review.

DECISION

The Commissioner finds that the Council failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information request made by Mr Church, in particular by failing to respond to Mr Church's requirement for review within the timescale laid down by 16(4) of the EIRs.

Given that the Council has now responded to Mr Church's request for review, the Commissioner does not require the Council to take any action in response to this failure.

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and Highland Council



Appeal

Should either Mr Church or the 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 notice.

Euan McCulloch
Deputy Head of Enforcement
15 April 2009



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

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.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.
- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (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.

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