

Decision Notice



Decision 157/2012 Mr James Proctor and Ms Freya Lees and the City of Edinburgh Council

Failure to respond to a request and a requirement for review

Reference No: 201201427

Decision Date: 11 September 2012

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Margaret Keyse

Acting 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 Mr Proctor and Ms Lees and their subsequent requirement for review.

Background

1. On 5 March 2012, Mr Proctor and Ms Lees wrote to the Council requesting certain specified information.
2. Having received no response, Mr Proctor and Ms Lees wrote to the Council on 25 April 2012, again asking for information on the same matter but in slightly modified terms.
3. On 4 June 2012, Mr Proctor and Ms Lees wrote to the Council to complain that they had received no response.
4. Mr Proctor and Ms Lees did not receive any response apart from an acknowledgement dated 15 June 2012, and on 23 July 2012 they wrote to the Commissioner's office, stating that they were dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Proctor and Ms Lees 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 9 August 2012, the Council was notified in writing that an application had been received from Mr Proctor and Ms Lees and was invited to comment on the application.
7. The Council responded on 27 August 2012, and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. In *Decision 218/2007 Professor A D Hawkins and Transport Scotland* 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.
9. This decision is concerned only with the Council's compliance with the statutory timescales for responding to the initial request from Mr Proctor and Ms Lees and their subsequent requirement for review. Having considered the type of the information requested by Mr Proctor and Ms Lees, the Commissioner considers it likely that the information would properly be considered environmental information. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days to respond to an information request, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 5(2)(a) of the EIRs.
11. Since the Council did not provide a response to the request from Mr Proctor and Ms Lees within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
12. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt to comply with a requirement for review, again subject to exceptions which are not relevant to 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 the requirement for review from Mr Proctor and Ms Lees 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. In its submission, the Council advised the Commissioner's office that it had responded to the request from Mr Proctor and Ms Lees on 7 August 2012.
15. The Council stated that Mr Proctor and Ms Lees had made a direct request for information to the Council's Property Conservation Department on 5 March 2012. This was dealt with as part of the resolution process within the Property Conservation Department. Further letters dated 25 April 2012 and 4 June 2012 were also sent to the Property Conservation Department.

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16. The Council's Freedom of Information Team received the letter dated 25 April 2012 on 15 June 2012 and logged the letter on the computer system. Unfortunately, the Freedom of Information Team was not sent a copy of the letter dated 4 June 2012. The Council explained that the delay was due to a breakdown in inter-departmental communication as a result of the high volume of cases being reviewed by the Resolution Team in the Property Conservation Department. Once the Freedom of Information Team had received the relevant information, a response was sent to the Mr Proctor and Ms Lees on 7 August 2012.
17. The Council apologised for the failure to respond within the timescales set out in the legislation.
18. While accepting that the Council's Property Conservation Department has been dealing with a high volume of complex cases recently, the Commissioner must emphasise the importance of public authorities prioritising their workloads to ensure compliance with the mandatory timescales in answering information requests.
19. The Commissioner notes that the Council has now carried out a review and has replied to the requirement for review from Mr Proctor and Ms Lees. She therefore does not, in this particular case, require the Council to take any further steps in relation to these failures.

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), in dealing with the information request made by Mr Proctor and Ms Lees.

Specifically, the Council failed to respond to their request for information within the timescale laid down by section 10(1) of FOISA and regulation 5(2)(a) of the EIRs, and failed to respond to their requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs. As the Council has now responded to the requirement for review from Mr Proctor and Ms Lees, the Commissioner does not require the Council to take any further steps in relation to these failures.

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Appeal

Should either Mr Proctor and Ms Lees 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 notice.

Euan McCulloch
Deputy Head of Enforcement
11 September 2012



Appendix

Relevant statutory provisions

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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.

...



The Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (2) The duty under paragraph (1)-
 - (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and

...

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.

...