

Decision Notice



Decision 175/2012 Mr Paul Bova and Highland Council

Failure to respond to request and request for review

Reference No: 201201664

Decision Date: 26 October 2012

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Rosemary Agnew

Scottish Information Commissioner

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Summary

This decision considers whether Highland 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 Bova.

Background

1. On 10 June 2012, Mr Bova wrote to the Council requesting certain specified information (discussed in more detail below).
2. Having received no response, Mr Bova wrote to the Council on 11 July 2012 requesting a review in respect of its failure to respond.
3. Mr Bova did not receive a response to his requirement for review and on 30 August 2012 he 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.
4. The application was validated by establishing that Mr Bova 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

5. On 21 September 2012, the Council was notified in writing that an application had been received from Mr Bova and was invited to comment on the application.
6. The Council responded on 5 October 2012 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

7. 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.
8. This decision is concerned only with the Council's compliance with the statutory timescales for responding to the initial request from Mr Bova and his subsequent requirement for review. Having considered the type of the information requested by Mr Bova, 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.
9. In its letter dated 5 October 2012, the Council submitted that in May and June this year its Planning Service received numerous complaints regarding planning permission at a site near Inverness. The Council explained that a group of existing residents are unhappy about housing being built on a site near their homes and have, for a number of years, been seeking to halt this process. The Council noted that, in May 2012, it received two requests for "all correspondence" relating to the site from members of a residents group. It advised that one of these requests came from a named individual who resides with Mr Bova.
10. The Council indicated that, in June 2012, Mr Bova and another resident submitted further requests. It noted that Mr Bova's request was once again for "all correspondence" as indicated in his email of 10 June 2012. At the same time, the Council submitted that Mr Bova and other group members were writing letters of complaint to the Chief Executive and the Planning Service. The Council advised that this correspondence and the information requests were putting considerable pressure on a small number of staff within the Planning Service who struggled to meet deadlines for complaints and information requests alongside their other case work.
11. The Council notes that Mr Bova's email of 10 June 2012 was treated as a request and a complaint, and he was sent a response to his complaint on 9 July 2012. Around the same time, the Council explained that the "all correspondence" requests were completed and two parcels of documents were sent to the named individual residing with Mr Bova. The Council commented that Mr Bova wrote to it on 18 July 2012, but did not state that he required a further copy of the correspondence already provided to the named individual. Consequently, the Council considered the substantive issue closed and did not see any reason to carry out a formal review.
12. The Commissioner has considered the Council's submissions and she notes that while the Council may have provided a response to the named individual, it did not, in fact, provide any such response to Mr Bova himself. The fact that the named individual used the same email address as Mr Bova and made a substantially similar request some weeks prior to Mr Bova's own request to the Council does not mean that the Council should consider that it has complied with both requests by only providing one of the two requesters with a full response.



13. It is clear that the Council expected the named individual to pass on the disclosed information to Mr Bova, and, given the content of the correspondence subsequently exchanged between both parties, it appears that the information sharing expected by the Council did, in fact, take place. However, given that the Council did not provide the response directly to Mr Bova, the Commissioner has concluded that the Council failed to respond to Mr Bova's information request in accordance with the requirements of FOISA or the EIRs.
14. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, 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.
15. Since the Council did not provide a response to Mr Bova's request for information 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.
16. The Commissioner also notes that despite Mr Bova requesting a review of the Council's failure to respond to his information request on 11 July 2012, no review was undertaken.
17. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
18. Since the Council did not provide a response to Mr Bova's requirement for review 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.
19. 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: she now requires a review to be carried out.

DECISION

The Commissioner finds that Highland 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 Bova, in particular by failing to respond to Mr Bova's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

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The Commissioner therefore requires the Council to provide Mr Bova with a response to his request for review within 45 days from the date of intimation of this decision notice, that is by 10 December 2012.

Appeal

Should either Mr Bova or Highland 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.

Alison Davies
Acting Deputy Head of Enforcement
26 October 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...