

# Decision Notice



Decision 098/2013 Mr Paul Blake and Comhairle nan Eilean Siar

Failure to respond to request and requirement for review

Reference No: 201300909  
Decision Date: 23 May 2013

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Rosemary Agnew**  
Scottish Information Commissioner

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



## Summary

This decision considers whether Comhairle nan Eilean Siar (the Comhairle) 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 information request made by Mr Paul Blake.

## Background

---

1. On 31 December 2012, Mr Blake emailed the Comhairle requesting certain specified information.
2. The Comhairle issued an acknowledgement of the request on 28 January 2013 to Mr Blake.
3. Having received no response to his request, Mr Blake emailed the Comhairle on 22 February 2013 noting that no response had yet been provided.
4. Mr Blake did not receive a response to his requirement for review and on 9 April 2013 emailed 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 Blake 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 7 May 2013, the Comhairle was notified in writing that an application had been received from Mr Blake and was invited to comment on the application.



7. On 7 May 2013, Mr Blake was informed that his application was valid and submissions would be requested from the Comhairle. Mr Blake responded later the same day and provided a copy of a review response issued on 1 May 2013 by the Comhairle. Mr Blake was dissatisfied with the review response.
8. On 8 May 2013, the investigating officer emailed the Comhairle advising it that a copy of the review response issued on 1 May 2013 had been provided by Mr Blake, but it did not appear to be compliant with section 16 of FOISA or regulation 13 of the EIRs. The investigating officer proposed that the Comhairle issued a revised review response.
9. On 22 May 2013, the Comhairle issued a revised review response to Mr Blake.
10. On the same day, the Comhairle provided submissions in response to Commissioner. These, insofar as relevant, are considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

---

11. In *Decision 218/2007 Professor A D Hawkins and Transport Scotland*<sup>1</sup> the Commissioner confirmed (at paragraph 51) that where environmental information is concerned, there are two separate statutory frameworks for access to that information. In terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
12. This decision is concerned only with the Comhairle's compliance with the technical requirements for responding to Mr Blake's initial request and requirement for review. Having considered the terms of Mr Blake's request, the Commissioner considers it likely that any information falling within its scope would properly be considered environmental information under the EIRs. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
13. 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.
14. The Comhairle explained that it had not responded to the request as there had been an administrative breakdown of the processing of requests and actions had been put in place to resolve such issues in the future. The Commissioner notes these points, but has concluded that, given that the Comhairle did not provide a response to Mr Blake's request for information within 20 working days, the Comhairle failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.

---

<sup>1</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



15. 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, 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.
16. The Comhairle provided the same submissions for not responding to the requirement for review as it did for not responding to the request, which the Commissioner notes. However, given that the Comhairle did not provide a response to Mr Blake'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.

## DECISION

The Commissioner finds that Comhairle nan Eilean Siar (the Comhairle) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the request made by Mr Paul Blake.

Specifically, the Comhairle failed to respond (i) to Mr Blake's request for information within the timescale laid down by section 10(1) of FOISA and regulation 5(2)(a) of the EIRs and (ii) to Mr Blake's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

As the Comhairle has now responded to the requirement for review from Mr Blake, the Commissioner does not require the Council to take any further steps in relation to these failures.

## Appeal

---

Should either Mr Blake or the Comhairle 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.

**Margaret Keyse**  
**Head of Enforcement**  
**23 May 2013**



## 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.

...