

Decision Notice

Decision 068/2015: Highlands and Island Airport Limited and Shetland Islands Council

Correspondence relating to the runway project at Sumburgh Airport:

Failure to respond within statutory timescales

Reference No: 201500734

Decision Date: 27 May 2015



Scottish Information
Commissioner

Summary

On 24 December 2014, Highlands and Islands Airports Limited (HIAL) asked Shetland Islands Council (the Council) for information about the runway project at Sumburgh Airport. This decision finds that the Council failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
24 December 2014	HIAL made an information request to the Council.
	The Council did not respond to the information request.
11 March 2015	HIAL sent a reminder that it had not received a response from the Council, and asked for confirmation that the Council intended to respond.
11 March 2015	The Council confirmed that it intended to respond to the request.
17 March 2015	HIAL wrote to the Council, requiring a review in respect of its failure to respond.
	HIAL did not receive a response to its requirement for review.
21 April 2015	HIAL wrote to the Commissioner's Office, stating that it was dissatisfied with the Council's failures to respond 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 May 2015	The Council was notified in writing that an application had been received from HIAL and was invited to comment on the application.
15 May 2015	The Commissioner received submissions from HIAL. These submissions are considered below.

Commissioner's analysis and findings

1. The Council confirmed that a response was sent to HIAL on 6 May 2015. A copy was provided to the Commissioner. It explained that two separate emails were received from HIAL on 11 and 17 March 2015, addressed to two different officers of the Council, concerning the same request. The Council explained that it had not recognised that the email of 17 March 2015 was in fact a requirement for review. It apologised for any misinterpretation of that email.

2. It is apparent from the terms of the request that at least some of the information caught by it will 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.
3. 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. This is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.
4. It is a matter of fact that the Council did not provide a response to HIAL's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
5. 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.
6. It is a matter of fact that the Council did not provide a response to HIAL'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.
7. The Council responded to HIAL's requirement for review on 6 May 2015, so the Commissioner does not require it to take any further action in relation to HIAL's application.

Decision

The Commissioner finds that Shetland Islands 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 responding to the information request made by Highlands and Islands Airports Limited (HIAL). In particular, the Council failed to respond to HIAL's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA, and regulations 5(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of these failures, in response to HIAL's application, given that a response has now been issued.

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

Appeal

Should either Highland and Islands Airports Ltd or Shetland Islands 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.

Euan McCulloch
Deputy Head of Enforcement

27 May 2014

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