

Decision Notice

Decision 048/2016: ABW Consultants Ltd and West Lothian Council

Planning and related matters at Whitrigg, East Whitburn: failure to respond within statutory timescales

Reference No: 201600159

Decision Date: 02 March 2016



Scottish Information
Commissioner

Summary

On 11 August 2015, ABW Consultants Ltd (ABW) asked West Lothian Council (the Council) for information about planning and related matters at Whitrigg, East Whitburn, particularly relating to paragraphs 65-76 of the Commissioner's Decision 070/2014. This decision finds that the Council failed to comply with ABW's 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).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

| Date | Action |
|------------------|--|
| 11 August 2015 | ABW made an information request to the Council. |
| 27 October 2015 | The Council responded to the information request. |
| 24 November 2015 | ABW wrote to the Council requiring a review of its decision. |
| | Apart from an acknowledgement, ABW did not receive a response to its requirement for review. |
| 26 January 2016 | ABW wrote to the Commissioner's Office, stating that it was dissatisfied with the Council's failure 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. |
| 15 February 2016 | The Council was notified in writing that an application had been received from ABW and was invited to comment on the application. |
| 29 February 2016 | The Commissioner received submissions from the Council. These submissions are considered below. |

Commissioner's analysis and findings

1. 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.
2. 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. This

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

is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.

3. It is a matter of fact that the Council did not provide a response to ABW'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.
4. The Council acknowledged that it had not responded to ABW's requirement for review, explaining this had been overlooked.
5. The Council apologised for this omission and confirmed that the review was being progressed.
6. 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 in accordance with section 21 and regulation 16.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to ABW for its failure to comply.

Decision

The Commissioner finds that West Lothian 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 ABW Consultants Ltd (ABW). In particular, the Council failed to respond to ABW's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Council to provide ABW with a response to its requirement for review, by **Monday 18 April 2018**.

Appeal

Should either ABW Consultants Ltd or West Lothian 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.

Enforcement

If West Lothian Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

02 March 2016

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