

Decision Notice

Decision 156/2016: Company R and City of Edinburgh Council

Advertising drum project: failure to respond within statutory timescales

Reference No: 201601007

Decision Date: 13 July 2016



Scottish Information
Commissioner

Summary

On 23 May 2016, Company R asked City of Edinburgh Council (the Council) for information between a named Councillor and the Council relating to City Centre Posters Advertising Drums and the Authorised Advertising Project. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with Company R's requirement for review within the timescale set down by FOISA and the EIRs.

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

Background

Date	Action
8 February 2016	Company R made an information request to the Council.
4 April 2016	The Council responded to the information request.
5 April 2016	Company R wrote to the Council, requiring a review of its decision.
	Company R did not receive a response to its requirement for review.
23 May 2016	Company R 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.
17 June 2016	The Council was notified in writing that an application had been received from Company R and was invited to comment on the application.
1 July 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 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

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

subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.

3. It is a matter of fact that the Council did not provide a response to Company R'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.
4. The Council acknowledged that it had not provided a response to Company R's requirement for review, explaining that it had treated the requirement for review as a new request and issued a response on 20 April 2016, under a different reference. It did not consider the information referred to in the review requirement to fall within the scope of Company R's original information request.
5. The Council accepted that it should have dealt with Company R's correspondence as a requirement for review. Clearly, if it did not consider the information referred to in the requirement for review to fall within the scope of Company R's original request for information, it should have explained that to Company R.
6. 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.
7. It is a matter of fact that the Council did not provide a response to Company R'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.
8. 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. This should take account of any action taken already in relation to the subject matter of the requirement for review, and whether it considers that subject matter to fall within the scope of Company R's original request for information.
9. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Company R for its failure to comply.

Decision

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Company R. In particular, the Council failed to respond to Company R's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to provide Company R with a response to their requirement for review, by **Friday 26 August 2016**.

Appeal

Should either Company R or City of Edinburgh 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 City of Edinburgh 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

13 July 2016

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