

Decision Notice

Decision 158/2017: Mr Guy Kerry and Highland Council

Rua Reidh Lighthouse: failure to respond within statutory timescale

Reference No: 201701291

Decision Date: 25 September 2017



Scottish Information
Commissioner

Summary

Highland Council (the Council) was asked for information about Rua Reidh Lighthouse. This decision finds that the Council failed to comply with the requester's requirement for review within the timescale set down by FOISA and the EIRs. The Commissioner has ordered the Council to respond to the requester's requirement for review.

Background

Date	Action
26 March 2017	Mr Kerry made an information request ¹ to the Council.
24 April 2017	The Council responded to the information request.
4 May 2017	Mr Kerry wrote to the Council requiring a review of its decision as he was dissatisfied with the information provided.
	Mr Kerry did not receive a response to his requirement for review.
25 July 2017	Mr Kerry wrote to the Commissioner's Office, stating that he 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.)
7 September 2017	The Council was notified in writing that an application had been received from Mr Kerry and was invited to comment on the application.
22 September 2017	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*², 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 is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.

¹ https://www.whatdotheyknow.com/request/access_around_rua_reidh_lighthou#incoming-957864

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

3. It is a matter of fact that the Council did not provide a response to Mr Kerry'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 replied to the email of 4 May 2017 in which Mr Kerry wrote to the Council requiring a review of its decision.
5. 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 by the Council in accordance with section 21 and/or regulation 16.

Decision

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

The Commissioner requires the Council to conduct a review and respond to Mr Kerry by **9 November 2017**.

Appeal

Should either Mr Kerry or the 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 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.

Alison Davies
Deputy Head of Enforcement

25 September 2017

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info