

Decision Notice

Decision 044/2018: Mx Laurel Bush and Highland Council

Policy on timing of gas service: failure to respond within statutory timescales

Reference No: 201800122

Decision Date: 26 March 2018



Scottish Information
Commissioner

Summary

Highland Council (the Council) was asked about its policy regarding the timing of gas central heating checks. The applicant was dissatisfied that the Council did not respond to the request for a review. After investigation, the Commissioner accepted that the Council did not receive the request for review, and therefore did not fail to respond under the Freedom of Information (Scotland) Act 2002 (FOISA) or the Environmental Information Scotland Regulations 2004 (the EIRs).

Background

Date	Action
30 October 2017	Mx Bush made an information request to the Council.
21 November 2017	The Council responded to the information request.
23 November 2017	Mx Bush wrote to the Council requiring a review of its decision.
	Mx Bush did not receive a response to the requirement for review.
17 January 2018	Mx Bush wrote to the Commissioner's Office, expressing dissatisfaction 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.
26 February 2018	The Council was notified in writing that an application had been received from Mx Bush and was invited to comment on the application.
6 March 2018	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. In its submissions, the Council stated that there was no evidence that the request for review letter had been delivered to the Council. The Council listed a number of staff who had carried out checks.

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

3. On 7 March 2018, the Council issued a review response to Mx Bush, stating that the review request had not been received, but also apologising for its failure to respond. The Commissioner was provided with a copy of this review response.
4. On 8 March 2018, Mx Bush was asked if he could provide the Commissioner with any confirmation that the request for review had been delivered to the Council. Mx Bush did not respond.
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. 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. The Commissioner accepts that the Council has no record of receiving the request for review. Ms Bush has not provided any evidence to show that it was posted or delivered. The Commissioner has concluded that the Council did not receive Mx Bush's requirement for review letter. Accordingly, he finds that the Council did not fail to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
7. The Council was provided with a copy of the request for review on 6 March 2018 and has now responded to it. The Commissioner does not require the Council to take any further action in relation to Mx Bush's application.

Decision

The Commissioner accepts that Highland Council did not receive the request for review from Mx Bush. He therefore finds that Highland Council did not breach section 21(1) of FOISA and regulation 16(4) of the EIRS in this case.

Appeal

Should either Mx Bush or Highland 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.

Alison Davies
Deputy Head of Enforcement

26 March 2018

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