

Decision Notice

Decision 130/2018: Ms D and Dumfries and Galloway Council

Old Military Road maintenance: failure to respond within statutory timescales

Reference No: 201800996

Decision Date: 23 August 2018



Scottish Information
Commissioner

Summary

On 22 February 2018, Ms D asked Dumfries and Galloway Council (the Council) for information about the maintenance policy and road repair history for the past year of the Old Military Road, specified on a map. This decision finds that the Council failed to respond to the request and request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

As the Council has now provided a response to Ms D, the Commissioner does not require it to take any action in this case.

Background

Date	Action
22/02/2018	Ms D made an information request to the Council.
27/02/2018	The Council acknowledged receipt of the request
	The Council did not respond to the information request.
26/03/2018	Ms D wrote to the Council requiring a review in respect of its failure to respond.
26/03/2018	The Council acknowledged receipt of Ms D's request for review and apologised for the delay.
06/04/2018	Ms D sent an email seeking a response.
06/04/2018	The Council apologised for the delay.
	Ms D did not receive a response to her requirement for review.
13/06/2018	Ms D wrote to the Commissioner's Office, stating that she 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.)
24/07/2018	The Council was notified in writing that an application had been received from Ms D and was invited to comment on the application.
02/08/2018	The Commissioner received a response from the Council with an apology for the delay in responding, which it said was due to acute staffing shortages.

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 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 Ms D'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. 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.
5. It is a matter of fact that the Council did not provide a response to Ms D'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.
6. The Council responded to Ms D's requirement for review on 2 August 2018, so the Commissioner does not require it to take any further action in relation to her application.

Decision

The Commissioner finds that Dumfries and Galloway 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 Ms D. In particular, the Council failed to respond to Ms D'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 does not require the Council to take any action in respect of these failures, in response to Ms D's application, given that a review response has now been provided to Ms D.

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

Appeal

Should either Ms D or Dumfries and Galloway 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

23 August 2018

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info