



Scottish Information
Commissioner
www.foi.scot

Decision Notice 250/2024

Fire safety and bins

Authority: City of Edinburgh Council

Case Ref: 202401186

Summary

The Applicant asked the Authority several questions about fire safety and bins. The Authority provided the Applicant with some information. The Commissioner investigated and found that the Authority had failed to fully respond to the request. He required the Authority to reconsider the request and issue a fresh review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement) and 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner” and paragraphs (b) and (f) of the definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions)

Background

1. On 11 July 2024, the Applicant made a request for information to the Authority. He asked the following questions (which, for clarity, the Commissioner has numbered):
 1. Confirm what site specific fire safety standards were considered from the initial roll out of [the Authority’s] bin hub scheme, before installation of first locations of phase 1, to determine the installed locations and confirm these considerations of fire safety with release of records of discussions in connection from the development stages of siting criteria from before initial delivery date.

2. Secondly, confirm how safe distances have been determined by [the Authority] in relation to bins located close to non-fire rated doors and windows and the tests associated in determining the distance, when the widely recognised standard set out by the CFPA-E on bin separation distances from dwellings is summarised as 'bins must not be stored within 6m of a dwelling' which is determined by testing involving igniting bins, designed to contain thousands of litres of combustible materials as per those at bin hubs.
 3. Confirm and release information relating to why, when safer locations are available at sites, [the Authority has] chosen more dangerous locations in respect to fire risk, which represents risk to life and property, considering the widely available fire safety guidance in respect to siting bins in close proximity to buildings and council records show a significant number of bin fires occurring every year within the city.
 4. Confirm and release information relating to, if [the Authority] consider they have a legal duty to comply with the duties set out in the Fire (Scotland) Act where there are relevant premises in close proximity to bin hubs encroaching the safe distances set out by widely available publications on the matter including EFRA guidance,
 5. Confirm if, and why, it has been determined there is no duty to comply with safe distances in all instances.
2. For background, the bin hubs the Applicant referred to were introduced as part of [a review of recycling and waste services for people living in flats](#)¹.
 3. The Authority responded on 9 August 2024. In response to questions 1, 2 and 3, the Authority provided the Applicant with a document titled "On-Street Communal Bins Fire Risk Mitigation Principles". In response to questions 4 and 5, the Authority stated that it complied its legal duties as set out in the Fire (Scotland) Act 2005.
 4. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not consider the Authority had responded to his request and that the document the Authority had provided to him was not relevant to his request.
 5. The Authority notified the Applicant of the outcome of its review on 3 September 2024, which upheld its original decision. The Authority noted that its original decision explained that the Authority adhered to the Fire (Scotland) Act 2005 and clarified that its bins "meet the 30min fire resistance standard" (all details of which were contained in the document it provided as part of its original decision). The Authority also informed the Applicant that, if he had broader concerns about the Authority's actions or decision making, he could complain through the Authority's established complaints process.
 6. The Applicant wrote to the Commissioner on the same day, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because the Authority had provided him with no relevant information in response to his request.

¹ <https://www.edinburgh.gov.uk/bins-recycling/communal-bin-review>

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 27 September 2024, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to the relevance of the Authority's answers, and the searches carried out.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Handling in terms of the EIRs

11. The Authority considered the Applicant's request under the EIRs, having concluded that the information requested was environmental information (as defined in regulation 2(1) of the EIRs).
12. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.
13. The information requested appears to fall clearly within the scope of the definition of environmental information contained in regulation 2(1) of the EIRs (specifically paragraphs (b) and (f) of that definition).
14. The Commissioner will therefore consider the request in what follows solely in terms of the EIRs.

Regulation 5(1) of the EIRs – Duty to make environmental information available

15. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information that is held by the authority when it receives a request.
16. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) of the EIRs requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
17. The Applicant submitted that the Authority had not provided him with any relevant information in response to his request.
18. During the investigation, the Authority accepted that its initial response and review outcome did not address the exact scope of the Applicant's request and that it would be "worthwhile to revisit" the matter. The Authority considered that a fresh review of the request would be appropriate.

19. In the circumstances, the Commissioner agrees that the Authority's response and review outcome failed to fully address the Applicant's request. He therefore finds that the Authority failed to comply with regulation 5(1) of the EIRs, and in doing so provided an incomplete response to the Applicant's request.
20. Consequently, the Commissioner requires the Authority to reconsider the Applicant's request and issue him with a revised review outcome.
21. In doing so, the Authority should ensure that it has correctly understood the scope of the Applicant's request. If the Authority is unsure of the correct scope of this request, the Commissioner would remind it that it should, in line with the requirements of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs](#)², engage with the Applicant to clarify the precise scope of the request.
22. During the investigation, the Authority stated that it would write to the Applicant to clarify an aspect of question 3 of his request. The Commissioner welcomes this engagement.

Decision

The Commissioner finds that the Authority failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

Specifically, in failing to provide a full response to the Applicant's request, the Commissioner finds that the Authority failed to comply with regulation 5(1) of the EIRs.

The Commissioner therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (in terms of regulation 16 of the EIRs), by **23 December 2024**.

Appeal

Should either the Applicant or the Authority 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 Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

Cal Richardson
Deputy Head of Enforcement

8 November 2024