

Decision Notice

Decision 006/2015: Doris Thomson and East Dunbartonshire Council

Inspection record for a specified street: failure to respond within statutory timescales

Reference No: 201402799

Decision Date: 12 January 2015



Scottish Information
Commissioner

Summary

On 5 June 2014, Digby Brown Solicitors, on behalf of their client Miss Thomson, asked East Dunbartonshire Council (the Council) for information about the inspection of a specified street on a specified date. This decision finds that the Council failed to failed to comply with Ms Thomson's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
5 June 2014	Miss Thomson made an information request to the Council.
23 July 2014	Miss Thomson corrected the date the requested inspection report should relate to.
6 August 2014	The Council responded to the information request.
18 August 2014	Miss Thomson asked the Council to confirm that its response related to the corrected inspection date.
10 September 2014	The Council provided the requested confirmation and advised Ms Thomson of her right to request a review.
6 October 2014	Miss Thomson wrote to the Council, requiring a review of its decision.
	Miss Thomson did not receive a response to her requirement for review.
5 December 2014	Miss Thomson wrote to the Commissioner's Office, stating that she 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.
18 December 2014	The Council was notified in writing that an application had been received from Miss Thomson and was invited to comment on the application.
7 January 2015	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

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

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.
3. It is a matter of fact that the Council did not provide a response to Miss Thomson's requirement for review within 20 working days, so the Commissioner finds that it to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
4. The Council responded to Miss Thomson's requirement for review on 7 January 2015, so the Commissioner does not require it to take any further action in relation to Miss Thomson's application.

Decision

The Commissioner finds that East Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or with the Environmental Information (Scotland) Regulations 2004 (the EIRs), in responding to the information request made by Miss Thomson. In particular, the Council failed to respond to Miss Thomson's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner does not require the Ministers to take any action in respect of this failure, in response to Miss Thomson's application, given that a response has been issued now.

Appeal

Should either Miss Thomson or East Dunbartonshire 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.

Euan McCulloch
Deputy Head of Enforcement

12 January 2015

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