

# Decision Notice

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**Decision 012/2016: Mr X and the City of Edinburgh Council**

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**Temporary advertising drums: failure to respond within statutory timescales**

Reference No: 201502078

Decision Date: 22 January 2016



Scottish Information  
Commissioner

## Summary

On 23 July 2015, Mr X asked the City of Edinburgh Council (the Council) for confirmation that the advertising drum format was used temporarily as part of the 2014 Edinburgh Festival Advertising Contract. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision finds also that the Council failed to comply with Mr X's requirement for review within the timescale set down by FOISA and the EIRs.

## Background

Date	Action
23 July 2015	Mr X made an information request to the Council.
	The Council did not respond to the information request.
2 October 2015	Mr X wrote to the Council requiring a review in respect of its failure to respond. Within this correspondence, Mr X also requested a review of the Council's response to a separate information request (of 30 June 2015), which is not the subject of this decision notice.
29 October 2015	The Council carried out a review and communicated the outcome to Mr X, but did not address the specific matter which is the subject of this decision notice: the review addressed the 30 June request only.
4 December 2015	Mr X wrote to the Commissioner's Office, stating that he 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.
14 December 2015	The Council was notified in writing that an application had been received from Mr X and was invited to comment on the application.
11 January 2016	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, if held, would be environmental information as defined by regulation 2(1) of the EIRs. In *Decision*

*218/2007 Professor A D Hawkins and Transport Scotland*<sup>1</sup>, 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 Mr X'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 Mr X'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 explained that the delay in responding to Mr X's request was due to the high volume and complexity of requests being received and processed by it. Specifically, it highlighted a high volume of requests received from Mr X, which it explained it had been working through systematically and seeking to ensure that all relevant information was disclosed.
7. The Council acknowledged that Mr X's correspondence of 23 July 2015 had not been logged as a new request and correctly processed. The Council apologised for the failure to respond to the request and for the lack of clarity and detail in the review outcome of 29 October 2015.
8. The Council responded to Mr X's requirement for review on 12 January 2016, so the Commissioner does not require it to take any further action in relation to Mr X's application. The Commissioner was provided with a copy of this review outcome.
9. The Commissioner notes that the Council apologised to Mr X for its failures to respond.

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

## Decision

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The Commissioner finds that the City of Edinburgh 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 Mr X. In particular, the Council failed to respond to Mr X's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 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 Mr X's application, given that a review outcome has now been issued.

## Appeal

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Should either Mr X or the City of Edinburgh 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**

**22 January 2016**

**Scottish Information Commissioner**

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