

Decision Notice



Decision 026/2011 Fairmilehead Community Council and the City of
Edinburgh Council

Failure to respond to a request for review

Reference No: 201100092
Decision Date: 09 February 2011

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether the City of Edinburgh Council complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by the Secretary of Fairmilehead Community Council.

Background

1. On 19 October 2010, the Secretary of Fairmilehead Community Council (the Community Council) emailed the City of Edinburgh Council (the Council) requesting information relating to the surveys and traffic flows at an Automatic Traffic Signals (ATS) on a named road over the last 12 months and any results from the installation of the Closed Circuit Television (CCTV) at the ATS or faults reported from the ATS within the last 12 months.
2. The Council responded on 16 November 2010, providing the Community Council with some of the information requested under the Environmental Information (Scotland) Regulations 2004 (EIRs).
3. On 21 November 2010, the Community Council sent two emails to the Council, asking it to review its decision. In one of these emails, the Community Council indicated it was not satisfied that it had been provided with all the information requested. In the other, the Community Council indicated that it considered the Council's decision to handle its request in terms of the EIRs rather than FOISA to be arbitrary, and inconsistent with its handling of a similar request.
4. The Community Council did not receive any response to these requests for review and on 17 January 2011 wrote to the Commissioner, stating that it was dissatisfied with that failure and applying to the Commissioner 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 certain specified modifications.
5. The application was validated by establishing that the Community Council had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

6. On 20 January 2011, the Council was notified in writing that an application had been received from the Community Council and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Council responded on 1 February 2011, acknowledging that it had failed to respond to the Community Council's requests for review and apologising for this failure. It explained that the requests for review had not been logged as such within its systems, and so no action had been taken.
8. During the investigation, the Council conducted a review and notified the Community Council of its outcome on 1 February 2011. Its letter to the Community Council apologised for the delay and advised it that no further information was held. It also maintained that it appropriate for it to handle the Community Council's request in terms of the EIRs, since it considered the information it had requested to be environmental information as defined by the EIRs.

Commissioner's analysis and findings

9. The Commissioner notes that the Council responded to the Community Council's information request in terms of the EIRs, although the Community Council has expressed dissatisfaction with its decision to do so.
10. In ***Decision 218/2007 Professor A D Hawkins and Transport Scotland*** 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.
11. Since this decision is concerned only with the Council's compliance with the statutory timescales for responding to the Community Council's request for review, the Commissioner has not reached any conclusion as to whether the information requested by the Community Council is environmental information. He has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
12. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).



13. Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days after the date of receipt of the applicant's representations to comply with a requirement for review, subject to exceptions which are not relevant in this case. Other parts of regulation 16, particularly paragraphs (3) and (5) govern the review process and the giving of notice of the outcome to the applicant (see Appendix below).
14. The Council did not provide a response to the Community Council's requirements for review of 21 November 2010, or carry out the review it had requested within the timescales required by section 21(1) of FOISA and regulation 16(4) of the EIRs. Consequently, the Commissioner finds that the Council failed to comply with section 21 of FOISA and regulation 16 of the EIRs.
15. The Commissioner notes the Council's explanation for its delay in providing a review response, and notes that it has since undertaken a review and provided notice of its outcome to the Community Council. In the circumstances, the Commissioner does not require the Council to take any further steps in response to this decision.

DECISION

The Commissioner finds that 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) by failing to respond to the Community Council's requirements for review as required by section 21 of FOISA and regulation 16 of the EIRs.

Given that the Council has now responded to the Community Council's request for review, the Commissioner does not require the Council to take any action in response to this failure.

Appeal

Should either the Community Council or the Council wish to appeal against this decision, there is an 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 notice.

Claire Sigsworth
Deputy Head of Enforcement
9 February 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

The Environmental Information (Scotland) Regulations 2004

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been



made, or any other action should have been taken, by the authority but was not made or taken.

- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.