

Decision Notice

Decision 052/2015: Mr Amir Aryan Manesh and Glasgow City Council

Flooding of a property: failure to respond within statutory timescales

Reference No: 201500580

Decision Date: 17 April 2015



Scottish Information
Commissioner

Summary

On 6 January 2015, Mr Manesh asked Glasgow City Council (the Council) for information about requests and correspondence sent to the Council in connection with flooding to his property. The decision finds that the Council failed to comply with Mr Manesh'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).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
6 January 2015	Mr Manesh made an information request to the Council.
11 February 2015	The Council responded to the information request.
25 February 2015	Mr Manesh wrote to the Council, requiring a review of its decision.
19 and 23 March 2015	Although Mr Manesh received acknowledgements, he did not receive a response to his requirement for review.
27 March 2015	Mr Manesh wrote to the Commissioner's Office, stating that he 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.
31 March 2015	The Council was notified in writing that an application had been received from Mr Manesh and was invited to comment on the application.
9 April 2015	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council acknowledged that it had failed to provide Mr Manesh with a response to his requirement for review. It explained this was due to the Council attempting to resolve the request at the initial stage, but failing to identify that a requirement for review had been made.
2. The Council confirmed the information had since been collated and was to be disclosed to Mr Manesh. This had not been done at the time of this decision.
3. 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 that

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

(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.

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. 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 Manesh'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 remainder of section 21 and regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 and regulation 16.

Decision

The Commissioner finds that Glasgow City 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 failing to respond to Mr Manesh's requirement for review within the timescales laid down by sections 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Council to provide Mr Manesh with a response to his requirement for review by **Monday 1 June 2015**.

Appeal

Should either Mr Manesh or Glasgow City 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.

Enforcement

If Glasgow City Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

17 April 2015

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