

Decision Notice



Decision 068/2008 Mr E Cowell and Aberdeen City Council

Aberdeen Western Peripheral Route

Reference No: 200700050

Decision Date: 19 June 2008

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether Aberdeen City Council (the Council) complied with the requirements of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr Cowell.

Background

1. On 23 July 2006, Mr Cowell wrote to the Council requesting:

The relevant information used to enable Mr Scott [the then Minister for Transport], or his agent, to choose the more expensive and environmentally destructive Western Route around Kingshill Woods [for the Aberdeen Western Peripheral Route (AWPR)] rather than the Eastern Route following the existing road. This should include but not be limited to relevant meeting minutes in which the two routes were discussed, and comparisons of a technical, environmental and cost nature. I would be grateful if you intend to supply extracts of documents, that the extracts show the original date of the document.

2. The Council responded on 16 August 2006. It withheld the information requested on the basis that it was exempt from disclosure under regulation 10(4)(d) of the EIRS, in that the information was incomplete. The Council also found that the public interest lay in favour of withholding the information.
3. On 1 October 2006, Mr Cowell wrote to the Council requesting a review of its decision. In particular, Mr Cowell challenged the Council's application of regulation 10(4)(d) and its application of the public interest test to the information.
4. The Council notified Mr Cowell of the outcome of its review on 27 October 2006. It overturned its initial response to Mr Cowell's request and informed him that it had instructed the managing agent of the AWPR partnership to provide Mr Cowell with the information he had requested.
5. Not having received any information from the Council, Mr Cowell contacted it again on 20 November 2006, requesting that it provide him with the information as a matter of urgency. The Council responded on 1 December 2006, providing Mr Cowell with two documents.



6. Mr Cowell remained dissatisfied with the Council's response to his request, believing that he had not been provided with the information he had requested and that the information he had been provided with had not been sent within the relevant statutory timescale. He therefore wrote to the Commissioner's Office on 4 January 2006 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 certain specified modifications.
7. The application was validated by establishing that Mr Cowell 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

8. On 30 January 2008, the Council was notified in writing that an application had been received from Mr Cowell and was invited to comment on that application. On 22 March 2007, the Council responded to the letter, providing comment on the application and in particular on whether further information was held in relation to Mr Cowell's request. It acknowledged that the information it held could have been provided sooner.
9. During the Commissioner's investigation, the Council provided Mr Cowell with further information in response to his request. As a result, Mr Cowell accepted that the Council had provided him with sufficient information in relation to his request, withdrew his substantive complaint and requested that the Commissioner only investigate whether the Council had breached the technical requirements of the EIRs in responding to his request for review.

Commissioner's analysis and findings

10. In his application to me, Mr Cowell argued that the Council has breached the technical provisions of the EIRs in not providing him with information in response to his request within 20 working days of receiving his request for review.
11. Regulation 16(4) of the EIRs state that an authority shall notify the applicant of the outcome of a review no later than 20 working days after receiving the applicant's request for review. Regulation 16(5) goes on to state that if the authority finds when carrying out a review that it has not complied with its duty under the EIRs in relation to the applicant's request, it shall immediately take steps to remedy its breach of duty.



12. In this case, the Council found in its review that it had wrongly applied regulation 10(4)(d) of the EIRs to the information requested by Mr Cowell and notified him of this within 20 working days of receiving his request for review, on 27 October 2006. It stated that the managing agent of the AWPR had been instructed to provide Mr Cowell with the information he had requested. However, the managing agent did not provide Mr Cowell with the information until 1 December 2006, approximately one month after the outcome of the review was sent to Mr Cowell.
13. It is clear that the Council responded to Mr Cowell's request for review within 20 working days of that request, and so there was no breach of regulation 16(4) of the EIRS. The remaining question is whether the Council breached regulation 16(5) of the EIRS, in not taking immediate steps to provide the information requested to Mr Cowell. Given that the information was not provided until 1 December 2006, as the Council has acknowledged, the Commissioner considers that in no sense could the steps it did take to comply with the review outcome be described as "immediate". The Commissioner does not consider, therefore, that the Council complied with regulation 16(5) in responding to Mr Cowell's request for review.

DECISION

The Commissioner finds that Aberdeen City Council (the Council) failed to comply with regulation 16(5) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information request made by Mr E Cowell, in particular by not taking immediate steps to provide Mr Cowell with the information he had requested in line with the outcome of its review.

The Commissioner does not require the Council to take any action as a consequence of this decision.

Appeal

Should either Mr Cowell 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.

Euan McCulloch
Deputy Head of Investigations
19 June 2008



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

16 Review by Scottish public authority

(...)

- (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.

(...)