

Decision Notice

Decision 096/2019: Company C and Dumfries and Galloway Council

Resurfacing works: failure to respond within statutory timescales

Reference No: 201900659

Decision Date: 20 June 2019



Scottish Information
Commissioner

Summary

Dumfries and Galloway Council (the Council) was asked for information relating to the tender, invoiced cost and name of the contractor for specified carriageway resurfacing and patching works.

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 also finds that the Council failed to comply with the requirement for review within the timescale set down by FOISA and the EIRs.

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

Background

Date	Action
21 November 2018	Company C made an information request to the Council.
26 November 2018	Although the Council acknowledged the request, Company C did not receive a response to the information request.
20 December 2018	Company C emailed the Council to remind it that a response to the request was still outstanding.
20 December 2018	The Council's Freedom of Information unit replied to advise that they were still waiting for a response back from the service dealing with the request.
15 January 2019	As Company C had still not received a response, it wrote back to the Council requiring a review in respect of its failure to respond.
	Company C did not receive a response to its requirement for review.
18 April 2019	Company C wrote to the Commissioner's Office, stating that it 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.
29 May 2019	The Council was notified in writing that an application had been received from Company C and was invited to comment on the application.
	The Council did not provide the Commissioner with any submissions.

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 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 Company C'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 Company C'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 set 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: he now requires a review to be carried out in accordance with section 21 and regulation 16.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Company C for its failure to comply.

Decision

The Commissioner finds that Dumfries and Galloway 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 Company C. In particular, the Council failed to respond to Company C'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)(a) and 16(4) of the EIRs.

The Commissioner requires the Council to issue Company C with a response to its requirement for review, by **Monday 5 August 2019**.

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

Appeal

Should either Company C or Dumfries and Galloway 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 Dumfries and Galloway 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.

Euan McCulloch
Deputy Head of Enforcement

20 June 2019

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