

Decision Notice

Decision 149/2014 Thomas Meechan and East Dunbartonshire Council

Inspection records: failure to respond within statutory timescales

Reference No: 201401284

Decision Date: 08 July 2014



Scottish Information
Commissioner

Summary

On 6 February 2014, Morisons Solicitors, on behalf of Mr Meechan, asked East Dunbartonshire Council (the Council) for maintenance and inspection records for the grounds and garden of a particular property. 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)/the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with Mr Meechan's requirement for review within the timescale set down by FOISA/the EIRs.

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

Background

Date	Action
6 February 2014	Mr Meechan made an information request to the Council.
	The Council did not respond to the information request.
2 May 2014	Mr Meechan wrote to the Council requiring a review of its failure to respond.
	Mr Meechan did not receive a response to his requirement for review.
10 June 2014	Mr Meechan wrote to the Commissioner's Office, stating that he was dissatisfied with those failures 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.
17 June 2014	The Council was notified in writing that an application had been received from Mr Meechan and was invited to comment on the application.
1 July 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. The Council has confirmed that it received Mr Meechan's request and requirement for review, and intends to send a review response to him. The Council had not responded to Mr Meechan by the time of this decision.
2. From the terms of the request, it is apparent 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

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

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.

3. 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.
4. It is a matter of fact that the Council did not provide a response to Mr Meechan'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.
5. 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.
6. It is a matter of fact that the Council did not provide a response to Mr Meechan'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.
7. 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: she now requires a review to be carried out in accordance with section 21/regulation 16.

Decision

The Commissioner finds that East Dunbartonshire Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Meechan. In particular, the Council failed to respond to Mr Meechan's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to provide Mr Meechan with a response to his requirement for review, by **Friday 22 August 2014**.

Appeal

Should either Mr Meechan or East Dunbartonshire 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 East Dunbartonshire Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that East Dunbartonshire Council has failed to comply. The Court has the right to inquire into the matter and may deal with East Dunbartonshire Council as if it had committed a contempt of court.

Alison Davies

Deputy Head of Enforcement

08 July 2014

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