

Decision Notice

Decision 155/2016: Company H and City of Edinburgh Council

Advertising drum project: failure to respond within statutory timescale

Reference No: 201601006

Decision Date: 13 July 2016



Scottish Information
Commissioner

Summary

On 8 February 2016, Company H asked City of Edinburgh Council (the Council) for information between a named Councillor and the Council relating to City Centre Posters Advertising Drums and the Authorised Advertising Project. 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).

Background

Date	Action
8 February 2016	Company H made an information request to the Council.
4 April 2016	The Council responded to the information request.
4 April 2016	Company H wrote to the Council, requiring a review of its decision.
5 May 2016	Company H received a response to its requirement for review.
23 May 2016	Company H wrote to the Commissioner's Office, stating that it was dissatisfied with the Council's failure to respond to its request on time 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 2016	The Council was notified in writing that an application had been received from Company H and was invited to comment on the application.
1 July 2016	The Commissioner received submissions from the Council. These submissions are considered below.

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.

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

3. It is a matter of fact that the Council did not provide a response to Company H'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. The Council has acknowledged that it should have addressed the failure to respond on time when it carried out its review. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Company H for its failure to comply.

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) in responding to the information request made Company H. In particular, the Council failed to respond to Company H's request for information within the timescale laid down by section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Company H's application, given that a response was provided.

Appeal

Should either Company H or City of Edinburgh 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.

Euan McCulloch
Deputy Head of Enforcement

13 July 2016

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