

Decision Notice

Decision 163/2018: Mr F and Highland Council

Negotiations relating to an access dispute

Reference No: 201800832

Decision Date: 15 October 2018



Scottish Information
Commissioner

Summary

The Council was asked about negotiations relating to an access dispute.

The Council provided an explanation to Mr F in response to this request. During the investigation the Council provided a timeline of events to assist Mr F.

The Commissioner investigated and found that the Council had responded to Mr F's request appropriately.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations (the EIRs) regulation 5(1) (Duty to make available environmental information on request)

The full text of the statutory provision cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 10 April 2018, Mr F made a request for information to Highland Council (the Council). Mr F sought details of when and how many times it had attempted to negotiate a solution in relation to an access dispute.
2. The Council responded on 10 April 2018, indicating that the issue was ongoing and had yet to resolved.
3. On 13 May 2018, Mr F wrote to the Council, requesting a review of its decision as he did not accept that the Council had responded to his request.
4. The Council notified Mr F of the outcome of its review on 15 May 2018. The Council stated that it considered the issue to be the subject of an ongoing and continuous negotiation, while accepting there were periods of activity and quiet periods between correspondence. The Council stated the last active negotiation period had ended in September 2017.
5. On 17 May 2018, Mr F wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (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. Mr F stated he was dissatisfied with the outcome of the Council's review because he had not been given a response which provided him with the number of times "...*the Council had failed to negotiate a solution*".

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr F made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 9 July 2018, the Council was notified in writing that Mr F had made a valid application.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, focusing on the steps taken to identify and locate any relevant information held by the Council.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr F and the Council. He is satisfied that no matter of relevance has been overlooked.
10. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives a request, as opposed to information an applicant believes the authority should hold (but which it does not in fact hold).
11. Mr F submitted that the Council only provided details of the most recent negotiations, which he emphasised ceased eight months prior to his request. He argued that there was nothing in the Council's response to answer how many times the Council had failed to negotiate a solution prior to this. He argued that there were no "ongoing and continuous negotiations", as the Council claimed.
12. In response to the Commissioner's request for submissions, the Council supplied a timeline of the involvement of the Council's staff with the property in question in relation to this access dispute. This timeline was provided to Mr F during the investigation.
13. The Council submitted that it considered the issue in question ongoing. It did not believe it had failed to negotiate a solution, but rather the issue was an outstanding one which had not been resolved. Given its position, the Council was unable to provide a numerical answer to Mr F's request.
14. When questioned about the searches conducted, the Council stated that it did not consider any searches to be necessary. The Council submitted that Mr F asked "...*how many times the Council failed to negotiate a solution...*" It argued that this request sought to elicit either a numerical response or a statement that no information was held. The Council submitted that there was no indication from this question that Mr F sought any supporting documentation. In that context, and as the relevant member of staff was satisfied they could answer the question from their own knowledge and understanding of the issues, the Council did not consider it necessary to carry out any searches for information.

Conclusions

15. Having considered carefully all relevant submissions and the terms of the request, the Commissioner is satisfied that the Council was reasonable in its response to this request. The Commissioner accepts that the Council took adequate and proportionate steps to establish what information was held which fell within the scope of this request.
16. In all the circumstances, the Commissioner accepts that the Council is genuinely of the view that the process in question is "ongoing", so it would follow that there would be no numerical response that could satisfy the terms of this request. Mr F may be of a different view, but it is not for the Commissioner to require the Council to adopt a different position in relation to its handling of the access issues in question, simply to provide Mr F with the answer he wants.

The Commissioner notes that the Council assisted Mr F in supplying a timeline of events during the course of the investigation.

17. Taking all the circumstances into account, the Commissioner is satisfied that the Council's response to this request was appropriate.

Decision

The Commissioner finds that the Council complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Mr F.

Appeal

Should either Mr F or the 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.

Margaret Keyse
Head of Enforcement

15 October 2018

Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

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