

Decision Notice

Decision 165/2017: Mr Guy Kerry and Highland Council

Access around Rua Reidh Lighthouse: failure to respond within statutory timescales

Reference No: 201701282

Decision Date: 02 October 2017



Scottish Information
Commissioner

Summary

The Council was asked for information regarding public access to the area around Rua Reidh Lighthouse.

This decision finds that the Council failed to respond to the request and the requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

Date	Action
22 May 2017	Mr Kerry made an information request to Highland Council (the Council)
	The Council did not respond to the information request.
21 June 2017	Mr Kerry wrote to the Council, requiring a review of its failure to respond.
	Mr Kerry did not receive a response to his requirement for review.
24 July 2017	Mr Kerry wrote to the Commissioner's Office, stating that he 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.
8 September 2017	The Council was notified in writing that an application had been received from Mr Kerry and was invited to comment on the application.
22 September 2017	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, the Council acknowledged that it had failed to provide responses to Mr Kerry's request and requirement for review. The Council apologised to the Commissioner for these failures.
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.
3. It is a matter of fact that the Council did not provide a response to Mr Kerry's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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.

5. It is a matter of fact that the Council did not provide a response to Mr Kerry's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
6. The remainder of section 21 sets 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.
7. The Commissioner recommends that the Council considers whether it would be appropriate to apologise to Mr Kerry for its failures to comply.

Decision

The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Kerry.

In particular, the Council failed to respond to Mr Kerry's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Council to provide a response to Mr Kerry's requirement for review by **16 November 2017**.

Appeal

Should either Mr Kerry or Highland 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 Highland 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

02 October 2017

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info