

Decision Notice

Decision 186/2016: Ms Marianne Arnott and East Dunbartonshire Council

Removal of wheelchair ramps: failure to respond within statutory timescale

Reference No: 201601247

Decision Date: 26 August 2016



Scottish Information
Commissioner

Summary

On 5 January 2016, Ms Arnott asked East Dunbartonshire Council (the Council) for information about the number of wheelchair ramps removed from sheltered/purpose built housing within the last five years. This decision finds that the Council failed to comply with Ms Arnott's requirement for review within the timescale set down by Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

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

Background

Date	Action
5 January 2016	Ms Arnott made an information request to the Council.
2 February 2016	The Council responded to the information request.
20 March 2016	Ms Arnott wrote to the Council, requiring a review in respect of its failure to respond.
	Ms Arnott did not receive a response to her requirement for review.
10 July 2016	Ms Arnott wrote to the Commissioner's Office, stating that she was dissatisfied with the Council's failure 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.
3 August 2016	The Council was notified in writing that an application had been received from Ms Arnott and was invited to comment on the application.
18 August 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. The Council explained that due to an administrative error the request for review had not been allocated correctly. It had prepared a response once the error was known.

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

3. The Council stated the response was not sent to Ms Arnott because it became apparent that the content of the letter might be inaccurate. The Officer involved had made attempts to clarify matters, but had not followed these up.
4. The Council confirmed that it would now issue a response to Ms Arnott. This had not been done at the time of this decision.
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. 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 Ms Arnott'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 and regulation 16.

Decision

The Commissioner finds that East Dunbartonshire 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 Ms Arnott. In particular, the Council failed to respond to Ms Arnott's requirement for review within the timescale laid down by sections 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Council to provide a response to Ms Arnott's requirement for review, by **Monday 10 October 2016**.

Appeal

Should either Ms Arnott 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 (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

26 August 2016

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