

Decision Notice

Decision 195/2017: Mr Brian Martin and City of Edinburgh Council

Building Warrant: failure to respond within statutory timescales

Reference No: 201701748

Decision Date: 22 November 2017



Scottish Information
Commissioner

Summary

City of Edinburgh Council (the Council) was asked for various information about the application for a Building Warrant received by the Council. This also included site inspection reports, the completion certificate and the Certificate of Design. This decision finds that the Council failed to respond to the requirement for review 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
5 June 2017	Mr Martin made an information request to the Council.
22 June 2017	The Council responded to the information request.
22 June 2017	Mr Martin wrote to the Council, requiring a review of its decision.
	Mr Martin did not receive a response to his requirement for review.
4 October 2017	Mr Martin wrote to the Commissioner's Office, stating that he 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.
27 October 2017	The Council was notified in writing that an application had been received from Mr Martin and was invited to comment on the application.
10 November 2017	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 acknowledged that the correct procedures had not been followed, resulting in Mr Martin not receiving a response to his requirement for review. It confirmed that it was addressing this failure with the relevant service areas, with a reminder of the correct procedure to be followed.

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

3. After receiving notification of the application from the Commissioner's office, the Council issued a response to Martin on 10 November 2017, apologising for the earlier failure to respond. The Commissioner was provided with a copy of this response.
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. 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.
5. It is a matter of fact that the Council did not provide a response to Mr Martin'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.
6. As the Council responded to Mr Martin's requirement for review on 10 November 2017, the Commissioner does not require it to take any further action in relation to Mr Martin's application.
7. The Commissioner notes that the Council has apologised to Mr Martin 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)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Martin. In particular, the Council failed to respond to Mr Martin's requirement for review within the timescales laid down by sections 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mr Martin's application, given that a response has now been issued.

Appeal

Should either Mr Martin or City of Edinburgh Council (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.

Euan McCulloch
Deputy Head of Enforcement

22 November 2017

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