

Decision Notice



Decision 248/2011 Mr Michael Hilferty and West Dunbartonshire Council

Failure to comply with required timescales to carry out a review

Reference No: 201102138

Decision Date: 14 December 2011

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether West Dunbartonshire Council (the Council) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr Hilferty.

Background

1. On 8 September 2011 Mr Hilferty emailed the Council requesting, under the EIRs, a copy of the asbestos register and management plan for properties owned by the Council. He also emailed the Council on 14 September 2011 checking his request had been received, to which the Council provided confirmation of receipt.
2. On 16 October 2011 Mr Hilferty wrote the Council requesting a review, having received no response to his request for information.
3. The Council replied on 17 October 2011, confirming it had received Mr Hilferty's requirement for review and further advising that it would ask the relevant department once more to process his request.
4. Mr Hilferty did not receive a response to his requirement for review and on 15 November 2011 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of 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, subject to certain specified modifications.
5. The application was validated by establishing that Mr Hilferty had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 22 November 2011 the Council was notified in writing that an application had been received from Mr Hilferty and was invited to comment on the application.



7. On 6 December 2011 the Council emailed the Commissioner's office with a copy of the review outcome sent to Mr Hilferty that day. The Council also provided submissions by letter, dated 7 December 2011, further explaining its handling of Mr Hilferty's request and apologising for the delay in issuing its response. These are considered further below.
8. Mr Hilferty confirmed (13 December 2011) that he still wished the Commissioner to issue a decision on his application, as he remained dissatisfied with the length of time the Council had taken to provide information first requested on 8 September 2011.

Commissioner's analysis and findings

9. In ***Decision 218/2007 Professor A D Hawkins and Transport Scotland*** 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.
10. This decision is concerned only with the Council's compliance with the statutory timescales for responding to the Mr Hilferty's initial request and requirement for review. Having considered the type of the information requested by Mr Hilferty, the Commissioner considers it likely that the information would properly be considered environmental information. He has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 5(2)(a) of the EIRs.
12. Since the Council did not provide a response to Mr Hilferty's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
13. Section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt to comply with a requirement for a review, again subject to exceptions which are not relevant to this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
14. Since the Council did not provide a response to Mr Hilferty's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.



15. In its submissions, the Council indicated that it was taking steps to improve its arrangements for managing future requests, particularly in relation to environmental information. While the Commissioner welcomes this commitment, he must also record a degree of disappointment that in this case the request and requirement for review were not processed within the applicable statutory timescales under either regime.
16. On this occasion, taking into account the Council's submissions and fact that Mr Hilferty has now received a response to his requirement for review, the Commissioner does not (in response to Mr Hilferty's application) require the Council to take any further steps in relation to this matter.

DECISION

The Commissioner finds that West Dunbartonshire Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or with the Environmental Information (Scotland) Regulations 2004 (the EIRs), in dealing with the information request made by Mr Hilferty. Specifically, the Council failed to respond (i) to Mr Hilferty's request for information within the timescale laid down by section 10(1) of FOISA and regulation 5(2)(a) of the EIRs, and (ii) to Mr Hilferty's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

Given that the Council has now given Mr Hilferty notice of the outcome of its review, the Commissioner does not require the Council to take any action in respect of these failures in response to Mr Hilferty's application.

Appeal

Should either Mr Hilferty or West Dunbartonshire Council wish to appeal against this decision, there is an 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 notice.

Euan McCulloch
Deputy Head of Enforcement
14 December 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

The 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.

- (2) The duty under paragraph (1) -

- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and



...

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

...

- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

...