

Decision Notice



Decision 183/2012 Ms Sarah Hamilton and Dundee City Council

Failure to respond to request and requirement for review

Reference No: 201201791

Decision Date: 6 November 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether Dundee City 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 information request made by Ms Hamilton.

Background

1. On 28 June 2012, Bonnar and Company, solicitors, acting on behalf of Ms Hamilton, wrote to the Council requesting certain specified information.
2. Having received no response to her request, Ms Hamilton wrote to the Council on 26 July 2012 noting that no response had yet been provided.
3. Agents acting on behalf of the Council wrote to Ms Hamilton on 30 July 2012, stating that the Council was unable to comply with her request within the 20 working days allowed under FOISA and had decided to extend this period by a further 10 days. The Council's agents sought to justify this delay by explaining that a response was required from a number of people working in different departments within the Council.
4. On 14 August 2012, agents acting on behalf of the Council again wrote to Ms Hamilton informing her that the Council required further time to respond to the request.
5. On 23 August 2012, Ms Hamilton wrote to the Council requesting a review of its failure to respond.
6. Ms Hamilton did not receive a response to her requirement for review and on 25 September 2012 wrote to the Commissioner's Office, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Ms Hamilton 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

8. On 1 October 2012, the Council was notified in writing that an application had been received from Ms Hamilton and was invited to comment on the application.
9. The Council responded on 15 October 2012 and its submissions are considered in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

10. 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.
11. This decision is concerned only with the Council's compliance with the statutory timescales for responding to Ms Hamilton's initial request and requirement for review. Having considered the type of the information requested by Ms Hamilton, the Commissioner considers it likely that the information would properly be considered environmental information. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
12. 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, 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.
13. Since the Council did not provide a response to Ms Hamilton'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.
14. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
15. Since the Council did not provide a response to Ms Hamilton'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.
16. Given that the Council has now responded to Ms Hamilton's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Ms Hamilton's application.



17. In its submissions, the Council apologised for its delay in corresponding with Ms Hamilton. The Council explained that this was due to the responsible officer within the Council being required to speak to a number of other officers within the Council. The Council explained that it had now replied to Ms Hamilton, and provided the Commissioner with a copy of its correspondence to Ms Hamilton.
18. Whilst the Commissioner is pleased that the Council has now provided a response to Ms Hamilton's requirement for review, she is concerned at certain aspects of its handling of the request.
19. In particular, the Commissioner notes that agents acting on behalf of the Council sought to extend the period of 20 working days allowed for a response under FOISA and the EIRs on two occasions. The Commissioner would point out that there is no provision within FOISA which allows an authority to extend the timescale for responding to a request. Under the EIRs, the response period can be extended by a further period of up to 20 working days in certain limited circumstances, if the volume and complexity of the information requested makes it impracticable for the authority either to comply with the request within the earlier period or to make a decision to refuse to do so. In this case, the Commissioner notes that the Council gave no indication to Ms Hamilton that it required additional time to comply as a result of the volume and complexity of the information requested.
20. The Commissioner also notes that the Council has not provided any real explanation for its failure to respond to the request and requirement for review other than by stating that the responsible officer had to speak to a number of people within the Council. In the Commissioner's view, the Council should by now have established effective procedures for handling information requests which would take account of internal communication and discussion. The Commissioner would urge the Council to ensure that any internal communication relating to information requests is expedited more quickly in future.

DECISION

The Commissioner finds that Dundee City Council (the 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 Ms Hamilton.

Specifically, the Council failed to respond (i) to Ms Hamilton'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 Ms Hamilton's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

As the Council has now responded to the requirement for review from Ms Hamilton, the Commissioner does not require the Council to take any further steps in relation to these failures.



Appeal

Should either Ms Hamilton or Dundee City 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.

Alison Davies
Acting Deputy Head of Enforcement
6 November 2012



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.

...