

Decision Notice



Decision 067/2013 Larbert, Stenhousemuir and Torwood Community Council
and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201300527
Decision Date: 15 April 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

This decision considers whether the Scottish Ministers (the Ministers) 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 Larbert, Stenhousemuir and Torwood Community Council (LSTCC).

Background

1. On 15 November 2012, LSTCC wrote to the Ministers requesting certain specified information.
2. The Ministers acknowledged LSTCC's request on 22 November 2012.
3. The Ministers sent a further letter to LSTCC on 16 December 2012, acknowledging that they were taking longer than expected to deal with the request.
4. LSTCC received no substantive response to its request for information.
5. On 16 January 2013, LSTCC wrote to the Ministers, requesting a review in respect of their failure to respond.
6. LSTCC did not receive a response to its requirement for review and, on 11 February 2013, wrote to the Commissioner's Office, stating that it 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.
7. The application was validated by establishing that LSTCC made a request for information to a Scottish public authority and 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 22 February 2013, the Ministers were notified in writing that an application had been received from LSTCC and were invited to comment on the application.



9. The Ministers responded on 18 March 2013. They made no comment on their handling of LSTCC's request and requirement for review, and offered no explanation as to why they did not respond within the prescribed timescales.
10. The Ministers did provide a copy of a response to LSTCC's requirement for review, issued on 15 March 2013. LSTCC confirmed that it had received this response, but continued to be dissatisfied with the time taken by the Ministers to respond to the request and requirement for review.

Commissioner's analysis and findings

11. 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. In terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.
12. This decision is concerned only with the Ministers' compliance with the technical requirements for responding to LSTCC's request. Having considered the terms of the request, the Commissioner considers it likely that any information falling within its scope would properly be considered environmental information under the EIRs. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
13. 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.
14. Since the Ministers did not provide a response to LSTCC's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
15. 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, 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.
16. Since the Ministers did not provide a response to LSTCC's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
17. Given that the Ministers have now responded to LSTCC's requirement for review, the Commissioner does not require them to take any further action in this case, in response to LSTCC's application.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>

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Community Council and the Scottish Ministers



DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) 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), by failing to respond to Larbert, Stenhousemuir and Torwood Community Council's (LSTCC's) request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2)(a) and 16(4) of the EIRs.

Given that the Scottish Ministers have now provided a response to the requirement for review, the Commissioner does not require the Scottish Ministers to take any action in respect of these failures, in response to LSTCC's application.

Appeal

Should either Larbert, Stenhousemuir and Torwood Community Council or the Scottish Ministers 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.

Euan McCulloch
Deputy Head of Enforcement
15 April 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...