

Decision Notice

Decision 154/2014 Mr Anthony Ryan and West Lothian Council

Inspection and repair records

Reference No: 201401016

Decision Date: 15 July 2014



Scottish Information
Commissioner

Summary

On 2 October 2013, Morisons Solicitors, on behalf of their client Mr Ryan, asked West Lothian Council (the Council) for information regarding the inspection and repair of a specific footpath. The Council responded by providing some information to Mr Ryan, while stating that it did not hold further information. During the investigation, the Council notified the Commissioner that it held additional information and that it had now been provided to Mr Ryan. While the Council failed to comply with the EIRs in not providing this information earlier, the Commissioner was satisfied by the end of the investigation that all relevant information had been provided to Mr Ryan.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a) and (c) of definition of "environmental information"); 5(1) (Duty to make available environmental information on request)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. In this decision, all references to Mr Ryan should be read as including Morisons Solicitors, acting on his behalf. On 2 October 2013, Mr Ryan wrote to the Council and, in relation to an accident which had occurred on a specific footpath, sought specific information relative to the inspection of and repairs to the footpath since 1 March 2011.
2. The Council responded on 13 October 2013. It provided Mr Ryan with information relating to maintenance work completed on 18 May 2013, explaining that this was the only relevant information it held.
3. On 11 December 2013, Mr Ryan wrote to the Council requesting a review of its decision. He referred to further work and expected additional information to be held.
4. On 13 December 2013, the Council responded to Mr Ryan's letter of 11 December 2013. The Council provided Mr Ryan with further information relative to the repair of 18 May 2013. It wrongly informed Mr Ryan that before making an application to the Commissioner, he should make a further request for review.
5. On 8 January 2014, Mr Ryan again wrote to the Council. He expected the Council to hold inspection records which would fall within the scope of his request.
6. On 14 January 2014, the Council wrote to Mr Ryan stating that it held no further information. Again, it wrongly informed Mr Ryan to request a review before making an application to the Commissioner.
7. On 21 January 2014, Mr Ryan sought a further review on the basis that not all of the information requested had been provided. This was re-sent on 16 April 2014, but no response was received.

8. On 7 May 2014, Mr Ryan wrote to the Commissioner, stating that he was dissatisfied with the Council's responses 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 specified modifications.
9. The application was validated by establishing that Mr Ryan 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. There was a review outcome the Commissioner could consider, even although it was followed by further correspondence. The case was then allocated to an investigating officer.

Investigation

10. On 6 June 2014, the investigating officer notified the Council in writing that an application had been received from Mr Ryan, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of the EIRs it considered applicable and to explain the steps it had taken to identify and locate the information Mr Ryan had requested.
11. The Council provided submissions to the effect that, having carried out further searches, it had located additional information falling within the scope of Mr Ryan's request.
12. Mr Ryan confirmed receipt of the information. He required a decision on the matter.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Ryan and the Council. She is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

14. It is clear from the Council's correspondence with both Mr Ryan and the Commissioner, and from the information itself, that the information sought by Mr Ryan is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs. It relates to the inspection and repair of a specific footpath; the Commissioner is satisfied that it would fall within either paragraph (a) of the definition of environmental information contained in regulation 2(1) (as information on the state of the elements of the environment) or paragraph (c) of that definition (as information on measures affecting or likely to affect those elements). Mr Ryan has not disputed this and the Commissioner will consider the information in what follows solely in terms of the EIRs.

Regulation 5(1) of the EIRs

15. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold, but which is not in fact held.

16. The Commissioner notes the submissions from Mr Ryan, who believes that the Council should hold information relating to identifying the fact that the footpath in question was in need of repair.
17. During the investigation, the Council provided submissions in response to the questions put by the investigating officer on this matter. The Council explained that during the investigation it had identified further information falling within the scope of Mr Ryan's request, related to identifying that the footpath in question was in need of repair. It confirmed that this information had been provided to Mr Ryan.
18. The Council described the searches and enquiries carried out in relation to the request, the resources searched and the staff involved. It confirmed that all information it held had now been given to Mr Ryan.
19. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that (by the close of the investigation) the Council had carried out adequate, proportionate searches to ascertain whether any information was held. She is also satisfied that the information located during the investigation has now been provided to Mr Ryan.
20. However, it is evident that adequate searches were not carried out in dealing with Mr Ryan's information request and requirement for review. If they had been, the Commissioner believes the information should have been located at that time. This may have negated the need for Mr Ryan to make an application to the Commissioner.
21. In failing to take adequate steps to identify, locate and provide the requested information, the Council failed to comply with regulation 5(1) of the EIRs.

Decision

The Commissioner finds that West Lothian Council failed to comply with the Environmental Information (Scotland) Regulations 2004, in responding to the information request made by Mr Ryan, by failing to provide Mr Ryan with all of the information that it held and which fell within the scope of his request the Council failed to comply with regulation 5(1) of the EIRS.

Given that the information held has now been provided to Mr Ryan, the Commissioner does not require the Council to take any action regarding this failure.

Appeal

Should either Mr Ryan or West Lothian 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.

Margaret Keyse
Head of Enforcement
15 July 2014

Appendix

Relevant statutory provisions

Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

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(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

...

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

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.

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