

Decision Notice

Decision 110/2019: Mr X and Highland Council

Repair at Cromarty Harbour: failure to respond within statutory timescales

Reference No: 201901030

Decision Date: 23 July 2019



Scottish Information
Commissioner

Summary

On 8 April 2019, Mr X asked Highland Council (the Council) for information about a repair at Cromarty Harbour.

This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The decision also finds that the Council failed to comply with Mr X's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
8 April 2019	Mr X made an information request to the Council.
	The Council did not respond to the information request.
13 May 2019	Mr X wrote to the Council requiring a review of its failure to respond.
	Mr X did not receive a response to his requirement for review.
24 June 2019	Mr X wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures 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 June 2019	The Council was notified in writing that an application had been received from Mr X and was invited to comment on the application.
11 July 2019	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. 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. This is

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

subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.

3. It is a matter of fact that the Council did not provide a response to Mr X's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
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. Again, 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 X'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. The Council responded to Mr X's requirement for review on 11 July 2019, apologising for the failures to respond, so the Commissioner does not require it take any further action in relation to Mr X's application.
7. The Council has explained to the Commissioner the reasons why it failed to respond to Mr X's request and request for a review. In summary, the staff who received the letter did not recognise that it was a request for information. The Council explained what action it intends to take to remedy the situation.

Decision

The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr X. In particular, the Council failed to respond to Mr X's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of these failures, in response to Mr X's application, given that a review was issued on 11 July 2019.

Appeal

Should either Mr X or 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Claire Stephen
Deputy Head of Enforcement

23 July 2019

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info