

Decision Notice

Decision 126/2016: Mr Andrew Ewing and Stirling Council

Planning Application: failure to respond within statutory timescales

Reference No: 201600863

Decision Date: 02 June 2016



Scottish Information
Commissioner

Summary

On 21 December 2015, Mr Ewing asked Stirling Council (the Council) for emails Council employees had sent and received in relation to a planning application for a carbon-neutral dwelling. This decision finds that the Council failed to comply with Mr Ewing's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
21 December 2015	Mr Ewing made an information request to the Council.
21 December 2015	An interim response was provided to Mr Ewing, which provided him with a link to the Council's online planning files. The Council confirmed it would continue to process the request for any other emails that fell within scope.
19 January 2016	The Council responded to the information request.
27 January 2016	Mr Ewing wrote to the Council requiring a review of its decision.
4 February 2016	Although Mr Ewing received an acknowledgement, he did not receive a response to his requirement for review.
2 May 2016	Mr Ewing wrote to the Commissioner, stating that he was dissatisfied with the Council's failure 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.
13 May 2016	The Council was notified in writing that an application had been received from Mr Ewing and was invited to comment on the application.
27 May 2016	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. In terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.

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

2. 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. 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.
3. It is a matter of fact that the Council did not provide a response to Mr Ewing'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.
4. The Council acknowledged that it had not responded to Mr Ewing's requirement for review, acknowledging an administrative failure in handling the request, compounded by a number of wider organisational factors.
5. As the Council responded to Mr Ewing's requirement for review on 1 June 2016, the Commissioner does not require it to take any further action in relation to Mr Ewing's application. A copy of the review outcome has been provided to the Commissioner.
6. The Commissioner notes that the Council has apologised to Mr Ewing for its failure to comply.

Decision

The Commissioner finds that Stirling 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 responding to the information request made by Mr Ewing. In particular, the Council failed to respond to Mr Ewing's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mr Ewing's application, given that a response was issued on 1 June 2016.

Appeal

Should either Mr Ewing or Stirling 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 Stirling Council (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.

Euan McCulloch
Deputy Head of Enforcement

02 June 2016

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