

Decision Notice



Decision 074/2014 Mrs Lesley Don and East Dunbartonshire Council

Improvement work for sports pitches at Lenzie: failure to respond within statutory timescales

Reference No: 201400130
Decision Date: 26 March 2014

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

On 25 September 2013, Mrs Don asked East Dunbartonshire Council (the Council) for information about drainage or other improvement work undertaken, or planned, for the football and rugby pitches at Boghead Road, Lenzie. 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 Mrs Don's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
25 September 2013	Mrs Don made an information request to the Council.
	The Council did not respond to the information request.
6 December 2013	Mrs Don wrote to the Council requiring a review in respect of its failure to respond.
	Mrs Don did not receive a response to her requirement for review.
18 January 2014	Mrs Don wrote to the Commissioner's Office, stating that she was dissatisfied with those failures 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.
4 March 2014	The Council was notified in writing that an application had been received from Mrs Don and was invited to comment on the application.
18 March 2014	The Commissioner received submissions from the Council. These submissions are considered below.



Commissioner's analysis and findings

1. The Council acknowledged that it had failed to respond to Mrs Don's request and requirement for review within the statutory timescales and apologised for this. It explained that the delay was due to confusion over which services held the requested information.
2. A response to Mrs Don's requirement for review was issued by the Council on 24 January 2014. A copy was provided to the Commissioner.
3. From the terms of the request, it is apparent 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.
4. 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 subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.
5. It is a matter of fact that the Council did not provide a response to Mrs Don'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.
6. 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.
7. It is a matter of fact that the Council did not provide a response to Mrs Don'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.
8. Given that the Council responded to Mrs Don's requirement for review on 24 January 2014, the Commissioner does not require it to take any further action in this case, in response to Mrs Don's application.

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



DECISION

The Commissioner finds that East Dunbartonshire 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 Mrs Don. In particular, it failed to respond to Mrs Don'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.

Given that the Council has now responded to Mrs Don's requirement for review, the Commissioner does not require the Council to take any action in respect of these failures, in response to Mrs Don's application.

Appeal

Should either Mrs Don or East Dunbartonshire Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. The appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Deputy Head of Enforcement
26 March 2014