



Scottish Information
Commissioner

Decision 036/2006 Mr Bellfield and Fife Council

Information relating to traffic calming measures in Dysart

Applicant: Mr Gary Bellfield

Authority: Fife Council

Case No: 200501975

Decision Date: 08 March 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 036/2006 Mr Bellfield and Fife Council

Request for information about traffic calming measures in Dysart – Environmental Information (Scotland) Regulations 2004 (EIRs) – failure to provide information held in response to a request – regulation 5 of EIRs – failure to consider representations and conduct a review – regulation 16 of EIRs – content of certain notices – regulation 13 of EIRs

Facts

Mr Bellfield wrote to Fife Council (the Council) on the matter of traffic calming measures in Dysart, expressing dissatisfaction with the exclusion of the High Street area from these measures. He requested all pertinent information relating to the decision as to why the High Street was excluded, citing his rights under the Freedom of Information (Scotland) Act 2002 (FOISA). The Council's response made no reference to FOISA (or, indeed, to the Environmental Information (Scotland) Regulations 2004 (the EIRs)), but provided a very broad explanation of the circumstances surrounding the development of traffic calming measures in this area. Mr Bellfield then wrote to the Council again, expressing dissatisfaction with this response. No response was provided to this second email. Mr Bellfield then made an application to the Commissioner for a decision.

Outcome

In the course of the investigation, the Council identified the information that it held in relation to Mr Bellfield's request and supplied it to him. The Commissioner is satisfied that the Council has supplied all relevant recorded information to Mr Bellfield.

However, the Commissioner found that the Council failed to act in accordance with the requirements of regulations 5, 13 and 16 of the EIRs in its response to Mr Bellfield's request and subsequent email.



Appeal

Should either the Council or Mr Bellfield wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Facts

1. Mr Bellfield emailed the Council on 20 April 2005. His email expressed concern about the exclusion of the High Street area from traffic calming measures introduced in other parts of Dysart. This email included the following information request:

“I require you to provide all pertinent information relating to this obvious (and seriously life-risk inducing) decision as to why the High Street area has been excluded (**as is my legal right under the FOI Act**).”
2. A response was provided to Mr Bellfield’s email by the Council on 22 April 2005. This made no reference to FOISA or related legislation.
3. The Council advised Mr Bellfield that the area around the primary school in Dysart had been brought in as a 20mph zone in 2003/04. It also noted that there were plans for the introduction of a 20mph zone in further parts of Dysart in 2005-06 or 2006-07. The email explained that the development of 20mph zones was funded by the Scottish Executive, and that the zones would be developed over 3 – 5 years. The Council stated that the area close to the Dysart Primary School was among the first 10 areas treated close to schools in Dysart, ahead of the further area which was included in the future development programme.
4. Mr Bellfield wrote again to the Council on 22 April 2005, thanking it for the reply, but indicating that this had not really answered the questions originally asked. This email referred specifically to:
 - a) the criteria for the areas selected (and all supporting statistical data for the selections), and
 - b) why the High Street was specifically excluded from the 20mph zone to date in preference to other areas.



5. The Council's email of 22 April 2005 had not explained to Mr Bellfield his rights to request a review under section 20 of FOISA or the equivalent regulation 16 of the EIRs.
6. The Council did not conduct a review or respond to Mr Bellfield's email of 22 April 2005 within the 20 working day period stipulated in section 21(1) of FOISA or the equivalent regulation 16(4) of the EIRs.
7. Mr Bellfield subsequently applied to me for a decision on 6 June 2005. In his application, he noted that in response to his information request, he had expected to receive papers from Council meetings, etc. that would cover the subject of traffic calming measures in Dysart, through consultation, investigation and final selection of sites. He indicated that he had also expected to receive the core selection criteria used to support these decisions, as well as the details of the individuals who made the decisions.
8. Mr Bellfield's application was allocated to an investigating officer.

Investigation

9. Mr Bellfield's application was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the Council to review the response to his request.
10. On 17 June 2005, the investigating officer contacted the Council to ask whether any response had ever been prepared or sent in relation to Mr Bellfield's email of 22 April 2005. At this point the Council confirmed that none had been sent.
11. However, on the same day, the Council responded to Mr Bellfield's email and elaborated further on the development of the traffic calming areas in Dysart, and the exclusion of the High Street from these areas.
12. The investigating officer then contacted Mr Bellfield on 23 June 2005. During this telephone call, Mr Bellfield confirmed that he had received the email from the Council. However, he indicated that he was still dissatisfied with this response, as he did not believe that his request for information had been fully answered. Mr Bellfield confirmed that he still wanted an investigation into this matter to proceed.



13. The investigating officer then wrote to the Council on 27 June 2005 to advise that a valid application for decision had been received and that a full investigation would now commence. The Council was invited to comment on the case in terms of section 49(3) of FOISA (which relates to investigations carried out under both the EIRs and FOISA).
14. This letter also noted that although Mr Bellfield had referred to FOISA in his request, the types of information he had requested may well fall under the definition of environmental information set out in regulation 2 of the EIRs. If this was the case, this letter advised that the investigation and my decision would be concerned with whether the Council had complied with the requirements of the EIRs, and not FOISA.
15. The Council was asked to provide:
 - a) copies of all information held by Fife Council that relates to the development of traffic calming measures in Dysart.
 - b) confirmation of whether the Council believed any or all of this information to be "environmental information" as defined in regulation 2 of the EIRs.
 - c) confirmation of whether the Council considered any of this information to be exempt information under any of the exemptions in Part 2 of FOISA, or under any of the exceptions listed in the EIRs.
 - d) a copy of any internal procedures for Council staff on how to handle requests for information under FOISA and EIRs.
16. The Council's response to this letter was received on 25 July 2005. This enclosed a series of 15 documents relating to the introduction of 20mph zones and speed humps in Central Fife. Eight of these documents related only to such measures outside Dysart, and as such did not relate to the current case.
17. The Council informed me that it considered this information to be environmental information for the purposes of regulation 2 of the EIRs.
18. The Council confirmed that Mr Bellfield's request had been treated by the Council on a "business as usual" basis, and so had not been considered under the EIRs.
19. The investigating officer wrote to the Council again on 5 September 2005, to seek further clarification on a number of points. These included:



- a) whether all documentation relevant to Mr Bellfield's request had now been identified. The investigating officer noted that most of the documents supplied in response to her initial request were committee reports. She asked whether there would therefore be recorded minutes of the discussions and decisions by the committee in relation to these reports. She also asked whether there were further relevant documents held at the department level, such as internal email, briefings and research that had informed these reports to committee.
- b) whether the Council now considered any of these documents to be exempt from release under the EIRs.
20. The Council responded to this further request on 13 September 2005. This included a further 8 documents (or parts thereof) that had been identified as falling under the scope of Mr Bellfield's request. These consisted of minutes of the meetings where the reports first identified had been discussed. The Council confirmed that it did not wish to withhold any of the information identified in the course of the investigation, and that there are no exceptions within the EIRs that it would wish to apply.
21. This email also provided further background information on the process by which the areas for traffic calming were selected, and confirmed that there were no further records relating to this held at departmental level.
22. The investigating officer contacted the Council in December 2005 to discuss the way forward in this case. She suggested that as the Council did not consider any of the information identified as relevant to Mr Bellfield's request to be exempt from release, it may wish to provide it to him at this point.
23. The Council wrote to Mr Bellfield on 15 December 2005, providing copies of the various documents that had been identified in the course of this investigation (excluding those that had been noted to refer only to measures outside Dysart). The Council also supplied a copy of the email sent to the investigating officer that explained the process involved in determining which streets would be subject to traffic calming measures.
24. Mr Bellfield emailed the investigating officer on 20 December 2005, confirming that he had received the Council's letter and the associated information. He expressed disappointment with the nature of the information supplied, because these documents did not reveal detailed decision making showing why certain streets were selected over the High Street.
25. In response to this email, the investigating officer explained that under FOISA and the EIRs, the right of access extends only to information that is held in recorded form by a public authority. She suggested alternative avenues for him to pursue his concerns if the answers he was seeking could not be found within recorded information held by the Council.



26. The investigating officer asked Mr Bellfield to confirm whether he was still dissatisfied with the Council's response to his request and whether he still wanted a decision to be issued in his case.
27. Mr Bellfield confirmed in an email of 6 January 2006 that he still wanted a decision to be issued in his case.

The Commissioner's analysis and findings

28. In his initial email to the Council of 20 April 2005, Mr Bellfield made clear that he was seeking to exercise his rights under freedom of information law. The Council failed to recognise and respond to this request within this framework, and as a result failed to act in accordance with a number of its obligations.
29. However, before I go on to note these failings, I want to note that from the point where my Office first commenced its investigation, the Council has taken proactive steps to rectify these errors, and to provide a full response to Mr Bellfield.
30. I am satisfied that the Council has now supplied to Mr Bellfield all recorded information that it holds in relation to the decision to develop traffic-calming measures in certain parts of Dysart in advance of others. The Council has also provided further information explaining how its Roads Department developed its plans for traffic calming measures, in order to elaborate on the information that could be supplied. I welcome these steps by the Council.
31. Although this information does not document the decision making process in a way that would fully answer Mr Bellfield's questions, I am satisfied that no further relevant recorded information exists or could be supplied to him. While I sympathise with Mr Bellfield's frustration with the lack of documentation that would answer his questions, I cannot require the Council to create new information in response to a request for information.

The Council's response to Mr Bellfield's request

32. On receipt of Mr Bellfield's email of 20 April 2005, the Council should have recognised that it contained a clear request for information, citing the requestor's rights under freedom of information law. This should have triggered
 - a) its consideration under the Council's procedures for responding to such requests,
 - b) a search to establish what relevant recorded information was held, and



- c) an appropriate response that satisfied the Council's statutory obligations and made Mr Bellfield aware of his rights to request a review of any decision, and to appeal to my Office.
33. A further consideration that should have been triggered in this case is that although Mr Bellfield cited his rights under freedom of information, the subject matter of his request meant that it should have been considered under the EIRs.
34. I have concluded that information relating to traffic calming measures falls under part (c) of the definition of environmental information contained in regulation 2(1) of the EIRs, because they are measures that influence the state of the land. Mr Bellfield's information request should therefore have been considered by the Council under the EIRs.
35. Regulation 5 of the EIRs states that a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant. The Council failed to comply with regulation 5 in its response to Mr Bellfield of 22 April 2005, because it did not supply the recorded information held by the Council falling within the scope of his request.
36. Regulation 13 of the EIRs states that where a request for environmental information is refused by a public authority, the applicant should be given written notice specifying the reasons for the refusal, and informing them of the review provisions under regulation 16 and appeal provisions available under regulation 17. As the Council's response did not supply all of the information requested, but also did not provide any reason for the refusal, nor explain the right to review, the Council failed to comply with its obligations under regulation 13.
37. Regulation 16 of the EIRs allows requestors to make representations to a public authority where it appears to them that the authority has not complied with any requirement of the EIRs in relation to their request.
38. On receipt of such representations, the authority should consider the representations, conduct a review and advise the applicant of the outcome no later than 20 working days after the receipt of the representations. The Council failed in its obligations under regulation 16(3) and (4) by failing to do this within the required timescale.



Decision

I find that Fife Council failed to act in accordance with its obligations under the Environmental Information (Scotland) Regulations 2004 in its response to Mr Bellfield's request for information.

The Council failed to comply with the following regulations, as set out in paragraphs 32 to 38 above:

- regulation 5(1)
- regulation 13
- regulation 16(3) and 16(4)

I find that during the course of my investigation, the Council took steps to supply all relevant information to Mr Bellfield. I do not require any further remedial steps to be taken in response to this decision.

Kevin Dunion
Scottish Information Commissioner
8 March 2006