

Decision Notice



Decision 128/2013 Miss Kirsty MacFarlane and Comhairle nan Eilean Siar

Failure to respond to request and requirement for review

Reference No: 201301362
Decision Date: 03 July 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

This decision considers whether Comhairle nan Eilean Siar (the Comhairle) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Miss MacFarlane on 10 February 2013.

Background

1. On 10 February 2013, Miss MacFarlane wrote to the Comhairle, in an email which included a request for information.
2. On 25 February 2013, the Comhairle acknowledged receipt of the request and responded to some of the points in Miss MacFarlane's email of 10 February 2013.
3. On 30 April 2013, Miss MacFarlane wrote to the Comhairle requesting a review in respect of its failure to respond to her request.
4. Miss MacFarlane did not receive a response to her requirement for review and, on 9 June 2013, wrote to the Commissioner's Office, stating that she was dissatisfied with that failure 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 certain specified modifications.
5. The application was validated by establishing that Miss MacFarlane 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. The case was then allocated to an investigating officer.

Investigation

6. On 13 June 2013, the Comhairle was notified in writing that an application had been received from Miss MacFarlane and invited to comment on the application.
7. The Comhairle responded on 27 June 2013 and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 5(2)(a) of the EIRs.
9. The Comhairle explained that, having responded on 25 February 2013 to some of the points in Miss MacFarlane's letter of 10 February 2013, it prepared a draft response to the remaining points (including the information request). This response, the Comhairle acknowledged, was not in fact sent to Miss MacFarlane.
10. Since the Comhairle did not provide a response to Miss MacFarlane's request for information within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
11. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
12. The Comhairle explained that Miss MacFarlane's requirement for review was acknowledged on 3 May 2013, but at that time the appropriate file had not been located to provide a substantive response.
13. Since the Comhairle did not provide a response to Miss MacFarlane's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
14. In its email of 27 June 2013, the Comhairle confirmed (with evidence) that it had responded to Miss MacFarlane's requirement for review. Given that the Comhairle has now responded, the Commissioner does not require it to take any further action in this case, in response to Miss MacFarlane's application.



DECISION

The Commissioner finds that Comhairle nan Eilean Siar (the Comhairle) 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), by failing to respond to Miss MacFarlane's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2)(a) and 16(4) of the EIRs.

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

Appeal

Should either Miss MacFarlane or Comhairle nan Eilean Siar wish to appeal against this decision, there is an 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.

Euan McCulloch
Deputy Head of Enforcement
03 July 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

The Environmental Information (Scotland) Regulations 2004

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.

- (2) The duty under paragraph (1)-

- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and



...

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

...

- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

...