

Decision Notice

Decision 097/2018: Mr M and Glasgow City Council

Housing repairs: failure to respond within statutory timescales

Reference No: 201800699

Decision Date: 2 July 2018



Scottish Information
Commissioner

Summary

On 19 January and 8 February 2018 Mr M asked the Council for various information regarding repairs to his property. The Council responded on a “business as usual” basis.

This decision finds that the Council failed to respond to one 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 M’s requirement for review for both requests within the timescale set down by FOISA and the EIRs.

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
19 January 2018 and 8 February 2018	Mr M made two related information requests to the Council.
15 February 2018	The Council responded, on a “business as usual” basis.
26 March 2018	Mr M wrote to the Council, requiring a review in respect of what he considered to be a failure to respond to his requests.
	Mr M did not receive a response to his requirement for review.
30 May 2018	Mr M 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.
7 June 2018	The Council was notified in writing that an application had been received from Mr M and was invited to comment on the application.
21 June 2018	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

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

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 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. The Council responded to Mr M on 15 February 2018. As the Council acknowledges, this response was made on a “business as usual” basis, without giving Mr M information on his rights. In addition, while it appears to explain the Council’s position in respect of the issues raised in both requests, it is not clear how the 15 February email is responding to either request in terms of FOISA or the EIRs, i.e. as a request for recorded information. In the circumstances, the Commissioner is not satisfied that it can be construed as a response under FOISA or the EIRs.
4. The Commissioner finds, therefore, that the Council did not provide a response to Mr M’s requests 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.
5. 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.
6. The Council has acknowledged that it did not recognise Mr M’s email of 26 March 2018 as a requirement for review in relation to its response of 15 February 2018. The Commissioner is satisfied that Mr M’s dissatisfaction with that response (in relation to the two requests specified above) is sufficiently apparent for it to qualify as a requirement for review in terms of section 20 of FOISA and regulation 16 of the EIRs.
7. It is a matter of fact that the Council did not provide a response to Mr M’s requirement for review within 20 working days, so the Commissioner finds that the Council failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
8. The remainder of section 21 and regulation 16 set out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 and regulation 16.
9. The Commissioner acknowledges, as the Council has suggested, that Mr M’s information requests and requirement for review could have been more clearly set apart from his other correspondence with the Council about the subject matter of the requests. With this in mind, he welcomes the Council’s proposal to recommend to Mr M that future requests are directed to the centralised team it maintains for that purpose: the Commissioner would also suggest to Mr M that he follows that recommendation.

Decision

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information requests made by Mr M.

In particular, the Council failed to respond to Mr M's requests for information and his requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2)(a) and 16(4) of the EIRs.

The Commissioner requires the Council to conduct a review under FOISA and the EIRs in response to Mr M's requirement to do so, and to respond in terms of section 21 of FOISA and regulation 16 of the EIRs, by 6 August 2018.

Appeal

Should either Mr M 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.

Euan McCulloch
Deputy Head of Enforcement

2 July 2018

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