



Decision Notice 007/2023

Investigation Report – failure to respond

Applicant: The Applicant

Authority: Scottish Fire and Rescue Service

Case Ref: 202300052

Summary

The Applicant asked the Authority for the investigation report regarding a fire at a specified address. The Applicant also wanted to see the current evacuation plans plus reports of Operational Assurance Visits and Operational Intelligence and Reassurance Visits carried out at specified properties. This decision finds that the Authority failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

1. The Applicant made an information request to the Authority on 3 October 2022.
2. Although the Authority acknowledged receipt of the request on 3 October 2022, it did not respond to the information request.
3. On 2 December 2022, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority'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.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 16 January 2023.
8. The Commissioner received submissions from the Authority on 3 February 2023. These are considered below.
9. The Authority stated that the reason for the delay in responding to the Applicant was due to technical issues. It explained that emails using its unique reference numbers were being attached automatically to case files, which meant that staff dealing with requests were not aware that any communications had been received, including requests for review. It further explained that its ICT department was investigating the cause and that tighter controls had been set up to try and prevent any recurrence.
10. 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](#)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.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant'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.
13. 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.
14. It is a matter of fact that the Authority did not provide a response to the Applicant'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.
15. The Authority responded to the Applicant's requirement for review on 2 February 2023, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
16. The Commissioner notes that, in its response of 2 February 2023, the Authority has apologised to the Applicant for its failure to respond in time.

¹ <https://www.itspublicknowledge.info/decision-2182007>

Decision

The Commissioner finds that the Authority 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 dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant or the Authority 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.

Wendy Snedden
Freedom of Information Officer

7 February 2022