

Decision Notice



Decision 135/2011 Mr John Hannah and Glasgow City Council

Inspection and maintenance records

Reference No: 201100267

Decision Date: 7 July 2011

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Hannah requested from Glasgow City Council (the Council) information relative to inspection, maintenance and handling of complaints in respect of a specific road. The Council failed to respond and, following a review, which resulted in Mr Hannah being provided with some information, Mr Hannah remained dissatisfied and applied to the Commissioner for a decision.

During the course of the investigation, the Council disclosed some additional information to Mr Hannah. It also accepted that Mr Hannah's information request fell to be dealt with under the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr Hannah's requests for information in accordance with regulation 5(1) of the EIRs, by failing to identify, locate and provide all the information covered by the terms of Mr Hannah's request and in failing to respond within the requisite timescales. By the end of the investigation, however, the Commissioner was satisfied that the Council had taken adequate steps to identify and locate all relevant information (which had since been provided to Mr Hannah). He did not require the Council to take any action.

Relevant statutory provisions and other sources

The Environmental Information (Scotland) Regulations 2004 (the EIRs): regulation 5(1) (Duty to make available environmental information on request)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 30 September 2010, solicitors acting on behalf of Mr Hannah wrote to the Council setting out 16 separate requests for information relative to inspection, maintenance and handling of complaints in respect of a named road.
2. Subsequent references to correspondence to and from Mr Hannah should be read as including correspondence to and from his solicitors acting on his behalf.



3. The Council wrote to Mr Hannah on 13 October 2010, informing him that it had received his request on 4 October 2010 and would respond as soon as possible and certainly within 20 working days.
4. On 4 November 2010, Mr Hannah wrote to the Council requesting a review, on the basis that it had failed to respond to his requests for information of 30 September 2010.
5. The Council acknowledged receipt of this request for review on 10 November 2010, and on 19 November 2010, wrote to Mr Hannah asking for clarification regarding the section of the road to which the information requests related.
6. Mr Hannah responded on 23 November 2010 and confirmed that the requests related to the whole of the named road.
7. Mr Hannah did not receive a response to his request for review and on 15 December 2010 wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Hannah had made a request for information to a Scottish public authority and had 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.
9. On 21 December 2010, the Council was notified in writing that an application had been received from Mr Hannah and was invited to comment on the application, as required by section 49(3)(a) of FOISA. As a result of this, the Council responded to Mr Hannah's request for review on 23 December 2010. This response dealt with the majority of the points contained within the requests, but certain points still required to be addressed by the Council. The Council responded to these outstanding points on 19 January 2011.
10. On 9 February 2011, Mr Hannah wrote to the Commissioner withdrawing his application regarding the Council's failure to respond to his request for review, while stating that he was dissatisfied with the outcome of the Council's review 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.
11. Mr Hannah's application to the Commissioner was in respect of his dissatisfaction with the responses he had received to his requests 6, 10, 12 and 14, which were in the following terms:
 6. *Details of the Council's risk register on the definition of an actionable hazard in terms of the Code of Practice for Highway Maintenance?*
 10. *Details of all inspections, including date and time of those inspections, inspection route and manner in which the inspection are carried out on [named road] for the period 01/03/2009 to 30/06/2010.*



12. *Details of the Council's policy or guidance showing how defects, damage or hazards on the pavement on [named road] were prioritised for repair for the period 01/03/2009 to 30/06/2010.*
 14. *Details of all maintenance conducted, including maintenance carried out by independent contractors working on [named road] for the period 01/03/2009 to 30/06/2010.*
12. The application was validated by establishing that Mr Hannah had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

13. On 21 February 2011, the investigating officer notified the Council in writing that an application had been received from Mr Hannah, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to provide the Commissioner with any further information withheld from Mr Hannah. It was asked to respond to specific questions, particularly in relation to specific points raised by Mr Hannah in his application to the Commissioner.
14. The Council responded on 14 March 2011, accepting that Mr Hannah's requests for information should have been dealt with in terms of the EIRs. However, as it had provided the information free of charge and had not attempted to apply any exemptions to it, the Council did not consider this omission to have been detrimental to Mr Hannah's position in any way. The Commissioner will make no further comment on this matter, which is not at the root of Mr Hannah's dissatisfaction with the Council's handling of his request.
15. With regard to timescales for compliance, the Council accepted that it had failed to respond to Mr Hannah's initial request for information within the relevant twenty working day timescale as a result of an administrative oversight. It also explained that its failure to respond to Mr Hannah's review request within twenty working days was a result of a combination of factors. While noting these responses, the Commissioner will make no further comment on the matters to which they relate (which again do not lie at the root of Mr Hannah's dissatisfaction).
16. There followed correspondence between the investigating officer, Mr Hannah and the Council as a result of which further information falling within the scope of Mr Hannah's request came to light and was provided to Mr Hannah.
17. The relevant submissions obtained from Mr Hannah and the Council (which addressed the other points raised by the investigating officer) will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

18. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Hannah and the Council and is satisfied that no matter of relevance has been overlooked.
19. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes it should, but does not in fact, hold.
20. The Council provided submissions in response to the questions put by the investigating officer on this matter. The Council advised on the searches and enquiries which it had undertaken with relevant sections and departments in order to identify what information falling within the scope of Mr Hannah's requests was held. The Commissioner is satisfied that adequate searches and enquiries had been carried out for this purpose by the close of the investigation. Given that these searches identified and located information not found in earlier searches, however, he cannot accept that the Council took adequate steps to identify and locate the information requested in response to Mr Hannah's request for information or his requirement for review: to the extent that it failed to do so, the Council failed to comply with regulation 5(1) of the EIRs.
21. While noting the applicant's outstanding concerns as to the absence of information on guidance given to staff on the categorisation of defects, the Commissioner is now satisfied that the Council has supplied Mr Hannah with all the information held and falling within the scope of his requests, and consequently he does not require the Council to take any further action in this case.



DECISION

The Commissioner finds that the Glasgow City Council (the Council) partially failed to deal with Mr Hannah's requests for information in accordance regulation 5(1) of the Environmental Information (Scotland) Regulations 2004, by failing to identify, locate and make available all the information it held which was covered by the terms of Mr Hannah's request.

By the end of the investigation, however, the Commissioner was satisfied that the Council had taken adequate steps to identify and locate all relevant information (which had since been provided to Mr Hannah). He did not require the Council to take any action.

Appeal

Should either Mr Hannah or the Council 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 notice.

Margaret Keyse
Head of Enforcement
7 July 2011



Appendix

Relevant statutory provisions

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.

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