



Scottish Information
Commissioner
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Decision Notice 114/2022

Placement of shed, water bins and waste bins at Dalry Cemetery – failure to respond

Applicant: The Applicant

Authority: City of Edinburgh Council

Case Ref: 202200778

Summary

The Applicant asked the Authority for information relating to items placed at the entrance to Dalry Cemetery. This decision finds that the Authority failed to respond to the Applicant's requirement for review within the timescale 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 11 April 2022.
2. The Authority responded to the information request on 4 May 2022.
3. On 7 June 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to her requirement for review.
5. On 12 July 2022, the Applicant wrote to the Commissioner, stating that she 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 9 August 2022.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority submitted that it received two information requests from the Applicant on 11 April 2022, which it responded to under separate reference numbers. It asserted that the Applicant quoted the incorrect reference number, in her request for review, leading to confusion over which response the Applicant was asking to be reviewed.
10. The Commissioner does not accept that the confusion over reference numbers has any bearing on the Authority's failure to respond as it was apparent which request the Applicant was referring to.
11. 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 Transport Scotland](#)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.
12. 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. 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.
13. 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.
14. 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.
15. The Authority responded to the Applicant's requirement for review on 21 July 2022, so the Commissioner does not require it to take any further action in relation to the Applicant's application.

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 requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 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.

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

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.

Jill Walker
Freedom of Information Officer

1 November 2022