

Decision Notice

Decision 134/2014 Mrs Alison Bourne and City of Edinburgh Council

Risk Register for Edinburgh Tram Project: failure to respond within statutory timescales

Reference No: 201401105

Decision Date: 18 June 2014



Scottish Information
Commissioner

Summary

On 15 February 2014, Mrs Bourne asked City of Edinburgh Council (the Council) for information about the detailed risk register for versions of the Business Cases from 2003 to 2011. This decision finds that the Council failed to respond to the 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

Date	Action
15 February 2014	Mrs Bourne made an information request to the Council.
17 March 2014	The Council responded to the information request.
18 March 2014	Mrs Bourne wrote to the Council requiring a review of its decision.
20 March and 8 May 2014	Although Mrs Bourne received acknowledgements, she did not receive a response to her requirement for review.
22 May 2014	Mrs Bourne 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. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
3 June 2014	The Council was notified in writing that an application had been received from Mrs Bourne and was invited to comment on the application.
17 June 2014	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. From the terms of the request, it is apparent 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 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 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.

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

3. It is a matter of fact that the Council did not provide a response to Mrs Bourne'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.
4. The Council informed the Commissioner that it had carried out a review and emailed the outcome to Mrs Bourne on 13 June 2014. A copy of the response was provided to the Commissioner. The Council apologise for failing to respond to Mrs Bourne's requirement for review within the statutory timescales.
5. Given that the Council responded to Mrs Bourne's requirement for review on 13 June 2014, the Commissioner does not require it to take any further action in relation to Mrs Bourne's application.

Decision

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), or the Environmental Information (Scotland) Regulations 2004 (the EIRs), in responding to the information request made by Mrs Bourne. In particular, the Council failed to respond to Mrs Bourne's requirement for review within the timescales laid down by sections 21(1) of FOISA and regulation 16(4) of the EIRs.

Given that the Council has now responded to Mrs Bourne's requirement for review, the Commissioner does not require the Council to take any action in respect of this failure, in response to Mrs Bourne's application.

Appeal

Should either Mrs Bourne or City of Edinburgh 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.

Euan McCulloch
Deputy Head of Enforcement
18 June 2013

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