

Decision Notice

Decision 148/2014 Linda Nicholson and Scottish Borders Council

Final plans of new sports facilities at Peebles High School: failure to respond within statutory timescales

Reference No: 201401273

Decision Date: 08 July 2014



Scottish Information
Commissioner

Summary

On 8 April 2014, Ms Nicholson asked Scottish Borders Council (the Council) for information about the final plans for the new sports facilities at Peebles High School. This decision finds that the Council failed to respond to the request within the timescales 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 Ms Nicholson's requirement for review within the timescales set down by FOISA and the EIRs.

Background

Date	Action
8 April 2014	Ms Nicholson made an information request to the Council.
8, 22 and 23 April 2014	Although acknowledgements were sent to Ms Nicholson on these dates, the Council did not respond to the information request.
10 May 2014	Ms Nicholson wrote to the Council requiring a review in respect of its failure to respond.
10 May 2014	Again, although Ms Nicholson received an acknowledgement, she did not receive a response to her requirement for review.
10 June 2014	Ms Nicholson wrote to the Commissioner's Office, stating that she 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.
16 June 2014	The Council was notified in writing that an application had been received from Ms Nicholson and was invited to comment on the application.
	The Council did not provide the Commissioner with any submissions.

Commissioner's analysis and findings

- 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.
- 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.

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 Ms Nicholson'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.
4. 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.
5. It is a matter of fact that the Council did not provide a response to Ms Nicholson'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.
6. The Council responded to Ms Nicholson's requirement for review on 19 June 2014. Ms Nicholson provided the Commissioner with a copy. The Commissioner does not, therefore, require the Council to take any further action in relation to Ms Nicholson's application.

Decision

The Commissioner finds that Scottish Borders Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Ms Nicholson. In particular, the Council failed to respond to Ms Nicholson's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA/regulation 5(2) and 16(4) of the EIRs.

Given that a response was sent to Ms Nicholson on 19 June 2014, the Commissioner does not require the Council to take any action in respect of these failures, in response to Ms Nicholson's application.

Appeal

Should either Ms Nicholson or Scottish Borders 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
08 July 2014

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