

Decision Notice

Decision 212/2016: Mr Angus Pattison and East Dunbartonshire Council

Bears Way Cycle Project: failure to respond within statutory timescales

Reference No: 201601578

Decision Date: 4 October 2016



Scottish Information
Commissioner

Summary

On 16 June 2016, Mr Pattison asked East Dunbartonshire Council (the Council) for information relating to the costs of the Bears Way Cycle Project. This decision finds that the Council failed to comply with Mr Pattison's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
16 June 2016	Mr Pattison made an information request to the Council.
30 June 2016	The Council responded to the information request.
3 July 2016	Mr Pattison wrote to the Council requiring a review of its decision.
	Mr Pattison did not receive a response to his requirement for review.
31 August 2016	Mr Pattison wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failure to respond (as clarified on 2 September 2016) 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 September 2016	The Council was notified in writing that an application had been received from Mr Pattison and was invited to comment on the application.
30 September 2016	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. 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 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. 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 Mr Pattison'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 remainder of section 21 and regulation 16 set out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 of FOISA/regulation 16 of the EIRs.
5. The Council has acknowledged that it had breached section 21 of FOISA and regulation 16 of the EIRs by failing to respond to Mr Pattison's requirement for review. It advised the Commissioner that it has now drawn up procedural changes, with a revision to its request tracking database, to allow clearer monitoring of internal reviews. The Council stated that it would issue a full review response to Mr Pattison very shortly.
6. The Commissioner recommends that the Council also considers whether it would be appropriate to apologise to Mr Pattison for its failure to respond on time.

Decision

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

The Commissioner requires the Council to provide a response to Mr Pattison's requirement for review, by **Friday 18 November 2016**.

Appeal

Should either Mr Pattison or East Dunbartonshire 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.

Enforcement

If East Dunbartonshire Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

4 October 2016

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