



Decision Notice 225/2024

The Manse Field, Beith – failure to respond

Applicant: The Applicant

Authority: North Ayrshire Council

Case Ref: 202401027

Summary

The Applicant asked the Authority for information about the Manse Field, Beith. This decision finds that the Authority failed to respond to the Applicant's request and requirement for review within the timescales 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 1 April 2024.
2. The Authority did not respond to the information request.
3. On 11 June 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 30 July 2024, stating that he 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 13 August 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority explained that the central FOI Team had recently been restructured. The changes, including the appointment of new staff in key managerial roles changes, combined with significant staff shortages, led to the delay in dealing with the Applicant's request.
10. The Commissioner notes that the Authority is in the process of recruiting new staff to its FOI Team to address the staffing issues.
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](#)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 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.
13. It is a matter of fact that the Authority did not provide a response to the Applicant'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.
14. 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.
15. 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.
16. The remainder of section 21 and regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
17. The Authority responded to the Applicant's requirement for review on 13 August 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
18. The Commissioner notes that the Authority apologised to the Applicant on 30 August 2024 for its failure to comply with the timescales.

Decision

¹ <https://www.foi.scot/decision-2182007>

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 request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 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.

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.

Colin MacFadyen
Freedom of Information Officer

09 October 2024