



Scottish Information
Commissioner
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Decision Notice 263/2024

Harbour View Development – failure to respond

Applicant: The Applicant

Authority: North Ayrshire Council

Case Ref: 202401108

Summary

The Applicant asked for the approval letter from North Ayrshire Council (the Council) to a specified Geo-Environmental Consultant relating to a site investigation report. This decision finds that the Authority failed to respond to the information request 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 15 January 2024.
2. The Authority did not respond to the information request.
3. On 21 February 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Authority responded to the Applicant the same day (21 February 2024) and then issued a review response on 29 February 2024.
5. The Applicant wrote to the Commissioner, stating that she was dissatisfied with the Authority's failure to respond on time and applied 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 17 September 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. 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.
10. The Authority acknowledged that it had failed to respond to the information request on time, explaining this was due to resourcing issues at that time and a delay within the Authority's internal approval process of the request.
11. 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.
12. 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.
13. The Commissioner notes that the Authority apologised to the Applicant for its failure to respond to the information request on time.

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

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.

Jennifer Ross
Deputy Head of Enforcement

19 November 2024