



Scottish Information
Commissioner

Decision 005/2006 Mr Sandison and Comhairle nan Eilean Siar

Request for information relating to marine harvest sites in a fish burial site on North Uist

**Applicant: Bruce Sandison
Authority: Comhairle nan Eilean Siar
Case No: 200503176
Decision Date: 18 January 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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St Andrews
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KY16 9DS



Decision 005/2006 Mr Sandison and Comhairle nan Eilean Siar

Failure of Comhairle nan Eilean Siar to respond to an information request and subsequent request for review within the statutory timescales set out in the Environmental Information (Scotland) Regulations 2004

Facts

1. On 11 June 2005, Mr Sandison made an information request to Comhairle nan Eilean Siar (the Council) for all information held by the Council regarding marine harvest sites in a fish burial site on North Uist. In his request, Mr Sandison referred to the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner considers that Mr Sandison's request should in fact have been made under the Environmental Information (Scotland) Regulations 2004 (the EIRs). However, it is irrelevant that Mr Sandison did not refer to the EIRs in his request as this does not affect his rights.
2. The Council acknowledged Mr Sandison's request on 13 June 2005, but did not contact him provide any further response. Mr Sandison then sent a reminder to the Council by email on 20 June 2005, which was again acknowledged, but did not receive any further response.
3. Mr Sandison then emailed the Council on 3 October 2005 requesting that it review its decision to withhold the information. He did not receive a response from the Council.
4. On 1 December 2005, Mr Sandison applied to the Scottish Information Commissioner, requesting that he investigate the Council's refusal to respond to his request for information and subsequent request for review.
5. The Commissioner notified the Council of the application made by Mr Sandison and invited its comments on 9 December 2005. The Council did not respond to the notice within the timescale indicated, and so was sent a further reminder on 10 January 2005. The Commissioner received the Council's response on 13 January 2005.



Decision

Under section 49(1) of FOISA (which covers applications to the Commissioner under both FOISA and the EIRs), except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of the EIRs and must issue a Decision Notice to both the applicant and the public authority.

I am satisfied that Mr Sandison made a request for information to the Council on 11 June 2005 which was valid in terms of the EIRs, followed by a valid requirement for review (in terms of regulation 16 of the EIRs) on 3 October 2005.

Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information. This period may be extended in certain circumstances by a public authority but was not extended here in line with the EIRs. Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days to carry out a review from receipt of the request to carry out the review.

The Council did not respond either to Mr Sandison's request for information or to his requirement for review within the respective timescales specified in the EIRs. The Commissioner therefore finds that the Council did not deal with Mr Sandison's request for information in accordance with the requirements of the EIRs in that it failed to comply with regulations 5(2)(a) and 16(4).

The Commissioner requires the Council to respond to Mr Sandison's request for information, by either providing the information requested or giving notice in terms of regulation 13 of the EIRs (refusal to make information available), within 42 days of receipt of this decision notice.

Appeal

Should either party wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Margaret Keyse
Head of Investigations

