

ABERDEENSHIRE COUNCIL

Freedom of Information (Scotland) Act 2002 ("The Act")

Decision Notice – Section 21(5), FOISA

Application by Mr Iain Lawrie

Dear Mr Lawrie

In accordance with Section 21(1) of the Act, the Review Panel of Aberdeenshire Council have considered your application for a Requirement for Review received by Aberdeenshire Council on 14th October 2014.

The Review Panel noted that the review request was on the basis of a failure to reply within 20 working days. The Review Panel determined that the authority had responded to the request on time to the website address used by the applicant but there had been a delivery failure report.

A statement of the reasons for the decision as required by Section 21(5) of the Act is appended.

Application for a decision by the Scottish Information Commissioner:

By virtue of Section 47 of the Act, a person who is dissatisfied with a Decision Notice issued under Section 21 (5) or (9) of the Act, may apply to the Scottish Information Commissioner for his decision as to whether, in any respect specified in that application, the request for information under Section 1(1) of the Act, has been dealt with in accordance with Part 1 of the Act.

An application to the Scottish Information Commissioner must be made in writing (or in another form having some permanency e.g. a video/tape recording) within six months of receipt of a Section 21 Decision Notice from Aberdeenshire Council's Review Panel. When applying to the Scottish Information Commissioner to make a decision with respect to the Section 21 Decision Notice, you must state your name and address for correspondence.

You must also specify:-

- a) the request for information to which the Requirement for Review which was made to Aberdeenshire Council relate;
- b) the matter which gives rise to your dissatisfaction and your request for review; and

- c) the matter which gives rise to your dissatisfaction pertaining to the decision given in the Section 21 Decision Notice.

Yours sincerely

Alastair Nicol

Clerk to
Review Panel
Aberdeenshire Council
22nd October 2014

FURTHER INFORMATION:

The Scottish Information Commissioner can be contacted at:-

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Telephone 01334 464610
Fax 01334 464611
Email enquiries@itspublicknowledge.info

Appeals Against a Decision of the Scottish Information Commissioner:

Section 56 of the Act provides that an appeal on a point of law may be made to the Court of Session:

- a) against a decision of the Scottish Information Commissioner (under subsection (2) of Section 49 – i.e. where the Commissioner determines that a decision does not require to be made) by the person who applied to the Scottish Information Commissioner to make such a decision (i.e. an applicant);
- b) against a decision of the Scottish Information Commissioner (under subsection 3(b) of Section 49) by an applicant or by the Scottish Public Authority in respect of which the decision was made or
- c) against a decision which resulted in the giving of an information notice or an enforcement notice to a Scottish Public Authority.

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Statement of Reasons

The Review Panel had before it the initial request from the applicant, the response from the service, and the request for review from the applicant.

The Review Panel noted that the request for review was on the basis of the authority's failure to provide a response within 20 working days.

The Review Panel examined the Council's database for Freedom of Information enquiries to determine the sequence of events and found the following timeline.

The initial request had been made on 11 September, 2014. The deadline for replying in 20 working days was therefore 9 October, 2014.

On 8 October, 2014, the following response was sent to the website address used by the applicant:-

"Dear Mr Lawrie

Freedom of Information (Scotland) Act 2002 - ("The Act")

We refer to your request dated 12 September 2014, for the following information:

A copy of the NESBReC Memorandum of Understanding referred to in your Fol response

"by the creation of a Memorandum of Understanding by Aberdeenshire Council to accurately reflect the operational status of NESBReC and its relationship with the NESBReC Advisory Group"

dated 14th October 2013.

Please find attached the Terms of Reference which is the document which outlines the relationship and remits of the NESBReC Advisory Group and NESBReC Management Team. In the subsequent period between October 2013 and the attached document of April 2014, the wording terminology of "Memorandum of Understanding" was replaced by "Terms of Reference". The "Terms of Reference" document fulfils the function of clarifying the present relationship between the Advisory Group and the Management Group.

We believe this satisfies your request.

Please contact me as the officer responsible for responding to your request if you have any further queries.

If, for any reason, you are not satisfied with this response, please refer to the further information attached.

Yours faithfully

*Craig Stewart
Team Leader - Specialist Services
Infrastructure Services
Aberdeenshire Council
Woodhill House
Westburn Road
Aberdeenshire Council
AB16 5GB*

On 11 October, 2014, the Council officer received a delivery failure report saying Delivery expired (message too old) 'timeout'. The response was sent a second time on 16 October, 2014, and on 19 October, 2014, a second delivery failure report was received.

Section 10(1) of the Act 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. The Review Panel determined that, although the Council believed that it had responded to the applicant's request for information within 20 working days, the response did not appear to have been received. The Review Panel accordingly found that the Council had failed to comply with section 10(1) of the Act.

The Review Panel apologised to the applicant on behalf of the Council for the failure to respond within 20 working days and agreed that the information be provided again to the applicant. The information is given below.

NESBReC Advisory Group and Management Team: Terms of Reference

April 2014

The North East Scotland Biological Records Centre (NESBReC) underwent a review during 2013. During this review NESBReC was confirmed as being an Aberdeenshire Council service sitting within the Specialist Services Team within Planning Policy and Environment.

The Management Structure for NESBReC now consists of an Advisory Group and a Management Team. This brief statement is intended to clarify the role of these two groups.

Advisory Group - The NESBReC Advisory Group meets between 3 and 4 times a year (decision made by the Group) with the aim of advising Aberdeenshire Council on the long term direction and development of NESBReC. The Group has an

independent Chair (currently John Milne) and includes representatives from all organisations who provide funding to and/or have service level agreements with NESBReC. In addition to members from funding organisations the Group includes representatives from other relevant Statutory and non-Statutory bodies, the biological recording community and environmental consultancy. The Advisory Group's meetings are intended to be issue based with external experts drawn in as necessary for a particular discussion. Members of the wider NE Scotland biological recording community are welcome to come to these meetings and the Advisory Group will review its membership and look for new members as required. The Advisory Group does not require a formal constitution, since all NESBReC staffing, financial and legal matters are handled by Aberdeenshire Council and reported to the NESBReC Management Team.

Funding arrangements with organisations supporting NESBReC are dealt with by Grant/Service Level Agreement or other agreement as appropriate with each supporting organisation individually.

Management Team - The NESBReC Management Team consists of the NESBReC Co-ordinator, the Specialist Services Team Leader and the NESBReC Advisory Group Chair. The NESBReC Advisory Group Chair is not required to attend every meeting, rather he/she would attend at his/her discretion and report back to the Group as necessary. Other Aberdeenshire staff (Environment Planner, Finance, ICT etc) are asked to attend Management Team meetings as required. The Management Team meets on a monthly basis and guides the operational running of NESBReC including finances, work programming, staffing etc.