

Decision Notice



Decision 040/2013 Banknock Hags & Longcroft Community Council and
Scottish Water

Failure to comply with technical requirements

Reference No: 201300382
Decision Date: 8 March 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
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Summary

This decision considers whether Scottish Water complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Banknock Haggs & Longcroft Community Council (BHLCC).

Background

1. On 22 November 2012, BHLCC emailed Scottish Water asking for certain specified information.
2. Scottish Water responded on 21 December 2012, stating that it was still trying to establish what information it held, in relation to the request. It advised BHLCC that it could request a review of its response, if dissatisfied.
3. On 23 January 2013, BHLCC asked Scottish Water to review its response.
4. BHLCC did not receive a response to its requirement for review and, on 4 February 2013, wrote to the Commissioner, stating that it was dissatisfied with that failure and applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
5. The application was validated by establishing that BHLCC had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 7 February 2013, Scottish Water was notified in writing that an application had been received from BHLCC and was invited to comment on the application.



7. Scottish Water issued a review response to BHLCC on 18 February 2013. It responded to the investigating officer on 20 February 2013 with its submissions on the way it had dealt with the information request. These are considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

8. 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 the EIRs.
9. This decision is concerned only with Scottish Water's compliance with the technical requirements for responding to BHLCC's request. Having considered the terms of BHLCC's request, the Commissioner considers it likely that any information falling within its scope would properly be considered environmental information under the EIRs. She has therefore considered the technical matters raised by this case in terms of both FOISA and the EIRs.
10. 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, subject to certain exceptions which are not relevant in this case. In respect of environmental information, the same timescale is laid down by regulation 5(2)(a) of the EIRs.
11. The Commissioner finds that, although Scottish Water communicated with BHLCC within the statutory period of 20 working days, its response of 21 December 2012 did not comply with the requirements in FOISA or the EIRs. Scottish Water simply advised that it had not yet succeeded in establishing what information it held. Accordingly, the Commissioner finds that Scottish Water failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
12. In relation to BHLCC's request for review, section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt to comply with a requirement for a review, subject to exceptions which are not relevant to this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
13. BHLCC requested a review on 27 December 2012 and Scottish Water issued its review response on 18 February 2013. Scottish Water explained that it did not respond to the request for review within the statutory timescale because it had required more time to obtain information from a third party in relation to the request. There had also been an unexpected increase in the number of requests for information requiring legal advice. Scottish Water went on to comment that it had employed another lawyer to assist with the workload and help prevent a repeat of the delay.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



14. Since Scottish Water did not provide a response to BHLCC's requirement for review within 20 working days, the Commissioner find that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
15. The Commissioner notes Scottish Water's explanation for the delay and the measures it has taken to help prevent a repeat of this occurrence. In view of this, and given that Scottish Water has now responded to BHLCC's requirement for review, the Commissioner does not require it to take any further action in this case.

DECISION

The Commissioner finds that Scottish Water 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 dealing with the information request made by Banknock Haggs & Longcroft Community Council (BHLCC), by failing to provide a compliant response within the period required by section 10(1) of FOISA and regulation 5(2)(a) of the EIRs. Scottish Water also failed to respond to BHLCC's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

As Scottish Water has now issued a compliant review response, the Commissioner does not require it to take any further action.

Appeal

Should either Banknock Haggs & Longcroft Community Council or Scottish Water 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 after the date of intimation of this decision notice.

Alison Davies
Acting Deputy Head of Enforcement
8 March 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

- (2) The duty under paragraph (1) -

- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and

...



16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

...

- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

...