

Decision Notice

Decision 190/2018: Argyll and Bute Council and Scottish Water

Water Services charges: failure to respond within statutory timescales

Reference No: 201801634

Decision Date: 20 November 2018



Scottish Information
Commissioner

Summary

Scottish Water was asked for information about the water services invoice that it issued to Argyll and Bute Council (the Council) in relation to a “gap site”. This decision finds that Scottish Water failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with the Council’s requirement for review within the timescale set down by FOISA/the EIRs.

The Commissioner has ordered Scottish Water to comply with the requirement for review.

Background

Date	Action
13 April 2018	The Council made an information request to Scottish Water.
13 April 2018	Although Scottish Water acknowledged the request, it did not respond to the information request.
15 and 17 May 2018	The Council sent two reminders as it had not received a response.
18 May 2018	Scottish Water responded apologising for the delay. It explained due to the complexity of the request it required more time. It gave notice in terms of regulation 7(1) of the EIRs that it required an extension of the statutory 20 working days.
21 May 2018	The Council acknowledged the correspondence of 18 May.
5 and 18 June 2018	The Council sent reminders again as it still had not received a response.
21 June 2018	The Council wrote to Scottish Water requiring a review in respect of its failure to respond.
	The Council did not receive a response to its requirement for review.
29 September 2018	The Council wrote to the Commissioner’s Office, stating that it was dissatisfied with Scottish Water’s failures 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.
31 October 2018	Scottish Water was notified in writing that an application had been received from the Council and was invited to comment on the application.
14 November 2018	The Commissioner received submissions from Scottish Water. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request that at least some of the information caught by it is likely to be environmental information as defined by regulation 2(1) of the EIRs. *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 EIRs.
2. 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.
3. It is a matter of fact that Scottish Water did not provide a response to the Council'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.
4. The Commissioner notes that Scottish Water required an extension of the statutory 20 working days in order to provide a response to the request, citing regulation 7 of the EIRs. Regulation 7(1) allows a Scottish public authority to extend the timescale for response by up to 20 working days if the volume and complexity of the information requested makes it impracticable to comply sooner or to reach a decision to refuse to comply. Regulation 7(2) states that requesters should be notified of this "as soon as possible".
5. The Commissioner finds that Scottish Water was not entitled to claim the 20 working day extension permitted by regulation 7(1) of the EIRs in relation to information which was not environmental information.
6. The Commissioner acknowledges that some of the information covered by the request is likely to be environmental information, but finds that Scottish Water failed to notify the Council "as soon as possible" that it was claiming an extension of 20 working days, and thereby failed to comply with regulation 7(2).
7. 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. 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.
8. It is a matter of fact that Scottish Water did not provide a response to the Council'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.
9. Scottish Water has acknowledged that it failed to respond to the request and request for review. It explained that in order for it to respond to this request, it required information from another department ("business") but, when this information was not forthcoming, it did not follow it up and the Council did not receive its response.
10. Scottish Water explained that it is in the process of reviewing its procedures to prevent this happening again, and that the new customer relationship management system should also help manage and track all requests it receives. It also stated that an internal audit of the

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

controls and procedures for dealing with and responding to requests is underway and will be completed by the first quarter of 2019.

11. Finally, Scottish Water commented that over the last year it has seen a rise in both volume and complexity of the nature of requests for information it has received, coinciding with staffing issues.
12. Scottish Water confirmed that it will respond to the Council's request for review as a matter of urgency – with a view to responding by 23 November 2018.
13. The remainder of section 21 of FOISA and regulation 16 of the EIRs set out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that Scottish Water failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 / regulation 16.
14. The Commissioner recommends that Scottish Water considers whether it would be appropriate to apologise to the Council for its failure to respond to its request in compliance with FOISA and the EIRs.

Decision

The Commissioner finds that Scottish Water failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Argyll and Bute Council (the Council). In particular, Scottish Water failed to respond to the Council's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA/regulation 5(2) and 16(4) of the EIRs.

The Commissioner also found that Scottish Water was not entitled to rely on regulation 7(1) of the EIRs to extend the timescale for response for information which was not environmental information. It also failed to notify the Council of its intention to claim the extension permitted by regulation 7(1) as soon as possible, as required by regulation 7(2).

The Commissioner requires Scottish Water to provide a response to the Council, by **4 January 2019**.

Appeal

Should either Argyll and Bute Council or Scottish Water 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.

Enforcement

If Scottish Water fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Scottish Water has failed to comply. The Court has the right to inquire into the matter and may deal with Scottish Water as if it had committed a contempt of court.

Alison Davies
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20 November 2018

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