

Decision Notice



Decision 284/2013 Mr William Speirs and Scottish Water

Works carried out at Templeton Pumping Station

Reference No: 201301484

Decision Date: 12 December 2013

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Rosemary Agnew

Scottish Information Commissioner

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Summary

On 22 February 2013, Mr Speirs asked Scottish Water for information relating to works undertaken at Templeton Pumping Station. Scottish Water provided some information to Mr Speirs, notifying him that it did not hold one category of information. Given that Scottish Water located and provided further relevant information during the investigation, the Commissioner found that the authority had not dealt with the request entirely in accordance with the EIRs.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraph (c) of definition of “environmental information”); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(1), (2) and (4)(a) (Exceptions from duty to make environmental information available)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 22 February 2013, Mr Speirs wrote to Scottish Water. He asked for information about works undertaken at Templeton Pumping Station and referred to in correspondence between Scottish Water and the Scottish Public Service Ombudsman (the SPSO), including dates, relevant documents, work sheets, etc.
2. Scottish Water responded on 27 March 2013, explaining that it was dealing with Mr Speirs' request under the EIRs (it applied the exemption in section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA)) and providing him with information relating to work at the pumping station.
3. In a letter to Scottish Water dated 28 March 2013, Mr Speirs noted that the information disclosed to him appeared to relate to works carried out in 2007. He explained that he was specifically seeking information on works carried out, or faults recorded, during 2010. He provided details of specific incidents, including dates. He also suggested that there should be records of regular scheduled maintenance visits, confirming that these too should be considered to fall within the scope of his request of 22 February 2013.



4. On 30 April 2013, Scottish Water provided a further response to Mr Speirs, disclosing more information and notifying him that it did not keep (and therefore did not hold) records of regular scheduled maintenance visits.
5. On 24 May 2013, Mr Speirs wrote to Scottish Water requesting a review of its decision. He did not believe the information he sought had been provided in full.
6. Scottish Water notified Mr Speirs of the outcome of its review on 19 June 2013, confirming that it had nothing further to add to its response of 30 April 2013.
7. On 24 June 2013, Mr Speirs wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of Scottish Water's review and applying to the Commissioner 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. Mr Speirs did not disagree with the authority's decision to deal with the request under the EIRs.
8. The application was validated by establishing that Mr Speirs made a request for information to a Scottish public authority and 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

9. On 26 July 2013, Scottish Water was notified in writing that an application had been received from Mr Speirs and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA). Questions focused on the steps taken to identify and locate any relevant information held by Scottish Water, and included points raised by Mr Speirs in his application.
10. A response was received from Scottish Water on 16 August 2013. Further submissions were sought, and obtained, from Scottish Water during the investigation.
11. During the investigation, Scottish Water disclosed further relevant information to Mr Speirs.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Speirs and Scottish Water. She is satisfied that no matter of relevance has been overlooked.



Regulation 5(1) of the EIRs

13. Regulation 5(1) of the EIRs (subject to various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do by any applicant.
14. Mr Speirs did not accept that Scottish Water had provided him with all the information it held regarding works it notified the SPSO it had carried out at Templeton Pumping Station in 2010. He identified specific instances on which the investigating officer sought comments from Scottish Water.
15. Scottish Water described the processes involved in identifying and undertaking works required at the pumping station, explaining that not every aspect of these would be recorded in permanent form. It also described the searches it had carried out, with details of the systems searched, the method of search and the staff consulted. It explained that all relevant information would be held electronically, with mobile devices used on site visits feeding into one of these systems.
16. During the investigation, the investigating officer had a meeting with relevant personnel from Scottish Water, at which the Scottish Water representatives provided further explanations of aspects of the relevant processes and records. Scottish Water carried out further searches following this meeting, having identified different search parameters from those used earlier. As a result of these searches and subsequent enquiries, Scottish Water identified further information falling within the scope of Mr Speirs' request, including information regarding regular scheduled maintenance visits to Templeton Pumping Station. This additional information was disclosed to Mr Speirs, subject to the redaction of personal data (to which he did not object). Scottish Water addressed certain specific points raised by Mr Speirs
17. Having considered Scottish Water's submissions and the information provided to Mr Speirs in the light of Mr Speirs' own comments, the Commissioner is satisfied that Scottish Water has now taken adequate steps to identify and locate all the information it holds and which falls within the scope of Mr Speirs' request. All of this has now been provided to Mr Speirs. However, given what was identified and located during the investigation, the Commissioner cannot accept that Scottish Water carried out adequate searches in dealing with Mr Speirs' information request and requirement for review. In failing to identify, locate and provide that information when dealing with Mr Speirs' request, Scottish Water failed to comply with regulation 5(1) of the EIRs.
18. The Commissioner is concerned that, because of the inadequacy of Scottish Water's searches, Mr Speirs has had to wait far longer than he should have done to receive information falling within scope of his request. While the Commissioner does not require Scottish Water to take any action in relation to its breaches of the EIRs in this case, she hopes that this will serve as a timely reminder to Scottish Water to ensure that thorough searches are carried out prior to responding to a request and any related requirement for review.
19. The Commissioner acknowledges that Scottish Water intends to offer training to relevant staff to improve compliance with FOISA, and ensure lessons are learned from their handling of Mr Speirs' request.



Regulation 10(4)(a) (information not held)

20. Under the EIRs, a Scottish public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.
21. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when an applicant's request is received.
22. As mentioned above, Scottish Water notified Mr Speirs that it did not hold any records of regular scheduled maintenance visits. In effect, therefore, it applied regulation 10(4)(a) to this information, a position it confirmed during the investigation.
23. As indicated above, later in the investigation Scottish Water located information relating to regular scheduled maintenance visits. In the circumstances, the Commissioner must conclude that Scottish Water was not correct to rely on regulation 10(4)(a) of the EIRs in respect of this information. In doing so, it failed to deal with that element of the request in accordance with regulation 5(1) of FOISA.
24. As the Commissioner is satisfied that Scottish Water has now provided Mr Speirs with all, the relevant information it holds, she does not require the authority to take any action in relation to the breaches identified in this decision.

DECISION

The Commissioner finds that Scottish Water failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Speirs. Scottish Water was wrong to rely on regulation 10(4)(a) for information relating to regular scheduled maintenance visits to Templeton Pumping Station. She finds that Scottish Water failed to comply with regulation 5(1) of the EIRs by not identifying, locating and providing this, and other, information that fell within scope of the request.

Given that Scottish Water has now disclosed the relevant information to Mr Speirs, the Commissioner does not require Scottish Water to take any action in respect of these failures, in response to Mr Speirs' application.



Appeal

Should either Mr Speirs 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.

Margaret Keyse
Head of Enforcement
12 December 2013



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

...

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

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)-

...

(b) is subject to regulations 6 to 12.

...



10 Exceptions from duty to make environmental information available–

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure.
- (4) A Scottish public authority may refuse to make environmental information available to the extent that
 - (a) it does not hold that information when an applicant's request is received;...