

Decision Notice

Decision 127/2018: Councillor George Freeman and Scottish Water

Water and Sewage systems at Faslane Camp: failure to respond within statutory timescales

Reference No: 201800979

Decision Date: 15 August 2018



Scottish Information
Commissioner

Summary

Scottish Water was asked for information in relation to water and sewerage at Faslane Camp. 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 Scottish Water failed to comply with Councillor Freeman's requirement for review within the timescale set down by FOISA and the EIRs.

As a review outcome has now been provided to Councillor Freeman, the Commissioner does not require any further action to be taken by Scottish Water.

Background

Date	Action
16 March 2018	Councillor Freeman made an information request to Scottish Water.
16 March 2018	Scottish Water acknowledged receipt of the request, confirming it would respond under the EIRs, but did not provide a response to the information request.
12 April 2018	Scottish Water wrote to Councillor Freeman apologising for delays and seeking an extension under regulation 7(1) of the EIRs. It also stated it would respond within the next seven working days.
23 April 2018	Councillor Freeman wrote to Scottish Water, complaining that seven working days had now passed without response.
30 April 2018	Councillor Freeman wrote to Scottish Water, seeking a review in respect of Scottish Water's failure to respond.
8, 17 and 18 May 2018	Councillor Freeman emailed Scottish Water, asking if it would acknowledge receipt of his requirement for review.
	Councillor Freeman did not receive a response to his requirement for review.
7 June 2018	Councillor Freeman wrote to the Commissioner's Office, stating that he 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.
25 July 2018	Scottish Water was notified in writing that an application had been received from Councillor Freeman and was invited to comment on the application.
6 August 2018	Scottish Water informed the Commissioner that it had provided Councillor Freeman with a review outcome on that date.
8 August 2018	Councillor Freeman acknowledged receipt of the review outcome and confirmed that he wished the Commissioner to issue a decision.

9 August 2018	The Commissioner received submissions from Scottish Water. These submissions are considered below.
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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 will 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. Scottish Water acknowledged that it had not provided Councillor Freeman with a response to his request or his requirement for review (prior to its response of 6 August 2018) and apologised for its failure to do so. It also accepted that regulation 7 of the EIRs had been incorrectly used in its correspondence of 12 April 2018.
3. 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.
4. It is a matter of fact that Scottish Water did not provide a response to Councillor Freeman'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.
5. 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. Again, 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.
6. It is a matter of fact that Scottish Water did not provide a response to Councillor Freeman'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.
7. Scottish Water responded to Councillor Freeman's requirement for review on 6 August 2018, so the Commissioner does not require it to take any further action in relation to Councillor Freeman's application.
8. The Commissioner notes that Scottish Water is reviewing its procedures, in conjunction with the introduction of a new management system, in an effort to avoid such errors in the future. He notes that the review outcome of 6 August 2018 included an apology to Councillor Freeman.

Decision

The Commissioner finds that Scottish Water failed to comply with Part 1 of the Freedom of

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

Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Councillor Freeman. In particular, Scottish Water failed to respond to Councillor Freeman's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner does not require Scottish Water to take any action in respect of these failures, in response to Councillor Freeman's application, given that that a review outcome has now been issued.

Appeal

Should either Councillor Freeman 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.

Euan McCulloch
Deputy Head of Enforcement

15 August 2018

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info