

Decision Notice



Decision 023/2009 Mr William Handy and Scottish Water

Failure to respond to request for review

Reference No: 200900147

Decision Date: 27 February 2009

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether Scottish Water complied with the technical requirements of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made by Mr Handy.

Background

1. On 13 November 2008, Mr Handy wrote to Scottish Water requesting the records of maintenance of the sewer and Buchan trap at Rosefield Street, Dundee. Mr Handy provided details of the sewer's location and advised that he was aware of work having been done on it on particular dates. He indicated that he was seeking records dating back at least 15 years.
2. Scottish Water responded on 10 December 2008. In this response, Scottish Water provided Mr Handy with a copy of computer records which had been logged for the particular sewer and Buchan trap identified by Mr Handy. Scottish Water explained that it only held records dating back to when it was formed in 2002.
3. Mr Handy wrote to Scottish Water on 15 December 2008 requesting a review of its decision. In particular, he noted that the information released to him did not contain any reference to maintenance work done to the pipes of the manhole or Buchan trap at the location specified. He advised that he was sure Scottish Water should have a record of some repair/maintenance work there in the past 6 years, noted that maintenance for the Buchan trap was recommended at least yearly.
4. Mr Handy did not receive a response to his request for review and on 21 January 2009 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure 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.
5. The application was validated by establishing that Mr Handy 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 9 February 2009, Scottish Water was notified in writing that an application had been received from Mr Handy and was invited to comment on the application as required by section 49(3)(a) of FOISA.
7. Scottish Water responded on 24 February 2009, expressing its regrets that Mr Handy was not satisfied that his request for a review had been dealt with timeously or to his satisfaction.
8. Scottish Water explained that it understood that a member of staff had contacted Mr Handy to explain that no further information was held and there was no relevant maintenance programme such as Mr Handy had envisaged. It also stated that a letter had been sent to Mr Handy on 23 December 2008, offering a meeting to discuss his concerns. Scottish Water also explained that a meeting had been set up with Mr Handy for 17 February 2009.
9. Scottish Water maintained that Mr Handy had not been ignored and that a number of people had been asked if there was more information to provide. It agreed to carry out a further search, however, and to respond to his request formally after the meeting.

Commissioner's analysis and findings

10. Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days from receipt of an applicant's representations to notify the applicant of its decision on a review.
11. The Commissioner finds that Scottish Water failed to notify Mr Handy of its decision on review within the 20 working days allowed for under regulation 16(4) of the EIRs.
12. In failing to comply with this timescale, Scottish Water failed to comply with regulation 16(4) of the EIRs.



DECISION

The Commissioner finds that Scottish Water failed to comply with the Environmental Information (Scotland) Regulations 2004 (EIRs) in dealing with Mr Handy's information request, in particular by failing to respond to Mr Handy's representations and notify him of its decision on review within the timescale laid down in regulation 16(4) of the EIRs.

The Commissioner requires Scottish Water to provide Mr Handy with its decision on review by 13 April 2009.

Appeal

Should either Mr Handy 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.

Euan McCulloch
Deputy Head of Enforcement
27 February 2009



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

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.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.
- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (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.

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