

Decision Notice

Decision 032/2018: UK Insurance Ltd and Scottish Water

Remedial works and repairs

Reference No: 201702175

Decision Date: 12 March 2018



Scottish Information
Commissioner

Summary

Scottish Water was asked about remedial works and repairs in response to flooding and sinkholes appearing at a specified location in 2016.

Scottish Water disclosed information in response to the request. It disclosed more during the investigation.

The Commissioner found that Scottish Water had failed to disclose all the requested information when responding to the request. He was satisfied that, by the end of the investigation, Scottish Water had identified and disclosed all relevant information.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (parts (a), (b) and (c) of the definition of "environmental information") (Interpretation); 5(1) and (2)(b) (Duty to make available environmental information on request)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 8 February 2017, UK Insurance Ltd made an information request to Scottish Water. Amongst other requests, it asked for information about "remedial works and repairs undertaken in response to the flooding and sinkholes appearing at a [named location] in 2016".
2. Scottish Water responded on 16 March 2017. It disclosed some information, and withheld the remainder under regulation 11(2) of the EIRs (Personal data). It applied the exemption in section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), on the basis that UK Insurance Ltd was seeking environmental information.
3. On 4 May 2017, UK Insurance Ltd emailed Scottish Water to request a review of its decision on the basis that it considered Scottish Water held information that had not been disclosed.
4. Scottish Water notified UK Insurance Ltd of the outcome of its review on 1 June 2017. It disclosed further information, which it considered fell within scope of the request.
5. On 1 December 2017, UK Insurance Ltd, applied 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 specified modifications. UK Insurance Ltd submitted that not all information falling in scope of its request had been identified and disclosed, and provided examples of the information it considered had been omitted. It did not challenge the decision to withhold personal data.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that UK Insurance Ltd made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 21 December 2017, Scottish Water was notified in writing that UK Insurance Ltd had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Scottish Water was invited to comment on this application and answer specific questions including explaining the searches it had conducted to locate the requested information.
9. On 30 January and 2 February 2018, Scottish Water disclosed further information to UK Insurance Ltd.
10. On 5 February 2018, Scottish Water provided its submissions, which are considered below.
11. On 12 February 2018, the investigating officer provided a summary of the Commissioner's investigation to UK Insurance Ltd.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the disclosed information and the relevant submissions, or parts of submissions, made to him by both UK Insurance Ltd and Scottish Water. He is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

13. The Commissioner is satisfied that the information covered by this request is environmental information, as defined in regulation 2(1) of the EIRs (paragraphs (a), (b) and (c) of the definition of "environmental information": see Appendix 1). UK Insurance Ltd's request was for information about remedial works and repairs as a result of flooding and a sinkhole which relates to activities (repairs to stop flooding and repair the sinkholes) (paragraph (c) of the definition) affecting or likely to affect the elements referred to in paragraph (a) of the definition; in particular, water and land.
14. UK Insurance Ltd has not disputed Scottish Water's decision to handle the request under the EIRs and so the Commissioner will consider the information solely in terms of the EIRs in what follows.

Regulation 5(1) – information falling within scope of the request

15. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold.
16. On receipt of a request for environmental information, the authority must establish what information it holds falling within the scope of the request. Having done so, regulation 5(1)

requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (see regulation 5(2)(b)).

17. Scottish Water explained the searches it had conducted to identify the information falling within scope of the original request. It provided screen shots of the searches conducted on its call management system and on the system it uses to track and record jobs.
18. Scottish Water explained that it had liaised with all members of staff across the business who might hold information covered by the request. It provided a scoping document of the types of information that were likely to be held.
19. Scottish Water noted that it had disclosed further information to UK Insurance Ltd on 30 January and 2 February 2018, in relation to the specific matters UK Insurance Ltd had identified in its application to the Commissioner. Scottish Water stated that it was now satisfied that it had disclosed all outstanding information.

The Commissioner's analysis and findings

20. The Commissioner is satisfied that the Scottish Water has provided the additional information which UK Insurance Ltd identified as missing from the response to its information request.
21. The Commissioner is satisfied with the detailed searches undertaken by Scottish Water during the investigation and concludes that Scottish Water does not hold any further information that falls within the request under consideration.
22. The Commissioner notes that Scottish Water contacted UK Insurance Ltd several times during the investigation, to ask whether it believed that any other information should be provided; no response was received. The investigating officer also contacted UK Insurance Ltd several times without response.
23. Taking into account all of the above, the Commissioner is satisfied that, by the end of the investigation, Scottish Water had identified and disclosed all the information falling within the scope of UK Insurance Ltd's request, on a reasonable interpretation of that request.
24. The Commissioner finds that by failing to disclose all relevant information when responding to UK Insurance Ltd's request and request for review, Scottish Water failed to comply fully with regulation 5(1) of the EIRs.

Decision

The Commissioner finds that Scottish Water partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by UK Insurance Ltd.

The Commissioner finds that by the end of the investigation, Scottish Water had disclosed all the information it held that fell within scope of UK Insurance Ltd's request. However, Scottish Water failed to comply in full with regulation 5(1) of the EIRs, by failing to disclose all of the information in response to UK Insurance Ltd's request.

Given that Scottish Water has now disclosed the requested information, the Commissioner does not require it to take any further action in relation to UK Insurance Ltd's application.

Appeal

Should either UK Insurance 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 March 2018

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

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- (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;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (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.

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