

Decision Notice

Decision 055/2019: Mr D and the Scottish Environment Protection Agency

Waste exemption: failure to respond within statutory timescales

Reference No: 201900402
Decision Date: 4 April 2019



Scottish Information
Commissioner

Summary

On 6 December 2018, Mr D asked the Scottish Environment Protection Agency (SEPA) for information about a waste exemption (reference Mamore WML/XC/1166165). This decision finds that SEPA failed to respond to the request within the timescale allowed by the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that SEPA failed to comply with Mr D's requirement for review within the timescale set down by the EIRs.

Background

Date	Action
6 December 2018	Mr D made an information request to SEPA.
	SEPA acknowledged receipt but did not respond to the information request.
23 January 2019	Mr D wrote to SEPA requiring a review of its failure to respond.
20 February 2019	Mr D received an apology for the delay in providing information but did not receive a full response to his requirement for review.
5 March 2019	Mr D wrote to the Commissioner's Office, stating that he was dissatisfied with SEPA's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
15 March 2019	SEPA was notified in writing that an application had been received from Mr D and was invited to comment on the application.
29 March 2019	The Commissioner received submissions from SEPA. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request that the information caught by it will be environmental information as defined by regulation 2(1) of the EIRs. The Commissioner accepts SEPA's decision that the request should be considered in terms of the EIRs.
2. Regulation 5(2)(a) of the EIRs 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.
3. It is a matter of fact that SEPA did not provide a response to Mr D's request for information within 20 working days, so the Commissioner finds that it failed to comply with regulation 5(2)(a) of the EIRs.

4. Regulation 16(4) of the EIRs 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.
5. It is a matter of fact that SEPA did not provide a response to Mr D's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section regulation 16(4) of the EIRs.
6. The remainder of regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review
7. SEPA responded to Mr D's requirement for review on 27 March 2019, with an apology for the delay in handling his request, and the Commissioner does not require it to take any further action in relation to Mr D's application.

Decision

The Commissioner finds that SEPA failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr D. In particular, SEPA failed to respond to Mr D's request for information and requirement for review within the timescales laid down by regulations 5(2) and 16(4) of the EIRs.

The Commissioner does not require SEPA to take any action in respect of these failures, in response to Mr D's application, given that a review was issued on 27 March 2019.

Appeal

Should either Mr D or SEPA 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.

Alison Davies
Deputy Head of Enforcement

4 April 2019

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info