

Decision Notice

Decision 172/2014 Animal Concern and the Scottish Ministers

Sea lice infestations at marine salmon farms: failure to respond within statutory timescales

Reference No: 201401772

Decision Date: 4 August 2014



Scottish Information
Commissioner

Summary

On 9 April 2014, Animal Concern asked the Scottish Ministers (the Ministers) for information about sea lice infestations in marine salmon farms. This decision finds that the Ministers failed to respond to the requirement for review within the timescale allowed by FOISA and the EIRs.

Background

Date	Action
9 April 2014	Animal Concern made an information request to the Ministers
2 May 2014	The Ministers responded to the information request.
4 May 2014	Animal Concern wrote to the Ministers requiring a review of their decision.
	Animal Concern did not receive a response to their requirement for review.
19 July 2014	Animal Concern wrote to the Commissioner's Office, stating that it was dissatisfied with the Minister's failure 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.
1 August 2014	The Ministers were notified in writing that an application had been received from Animal Concern and were invited to comment on the application.
1 August 2014	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. From the terms of the request, it is apparent 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. 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. 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.
3. It is a matter of fact that the Ministers did not provide a response to Animal Concern's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.

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

4. The Ministers responded to Animal Concern's requirement for review on 31 July 2014, and provided the Commissioner with a copy of the response. As the Ministers have now responded, the Commissioner does not require them to take any further action.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Animal Concern. In particular, the Ministers failed to respond to Animal Concern's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

Given that the Ministers responded to Animal Concern's request for review on 31 July 2014, the Commissioner does not require the Ministers to take any action in respect of this failure, in response to Animal Concern's application.

Appeal

Should either Animal Concern or the Scottish Ministers 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 August 2014

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