



Decision Notice 119/2022

Governance of the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003 – failure to respond

Applicant: The Applicant

Authority: Scottish Ministers

Case Ref: 202200909

Summary

The Applicant asked the Authority for information about matters relating to the governance of the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003. This decision finds that the Authority failed to comply with the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

1. The Applicant made an information request to the Authority on 13 May 2022. The information requested related to section 46F(1), (2), (3), (4) and 46G(1) of the Salmon and Freshwater Fisheries (Consolidation)(Scotland) Act 2003.
2. The Authority responded to the information request on 10 June 2022.
3. On 20 June 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to its requirement for review.
5. On 17 August 2022, the Applicant wrote to the Commissioner, stating that it was dissatisfied with the Authority'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.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 18 August 2022.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority submitted that it was unable to meet the legislative timescale to complete the review due to the significant amount of relatively complex information and pressure on resources available.
10. 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 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 the EIRs.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant'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.
13. The remainder of section 21 and regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out by the Authority in accordance with section 21 and regulation 16.
14. The Commissioner recommends that the Authority consider whether it would be appropriate to apologise to the Applicant for its failure to comply.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs. The Commissioner requires the Authority to issue a response, by **19 December 2022**.

¹ <https://www.itspublicknowledge.info/decision-2182007>

Appeal

Should either the Applicant or the Authority 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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Colin MacFadyen

Acting Deputy Head of Enforcement

03 November 2022