



Scottish Information
Commissioner

Decision 051/2008 JIG Limited and Scottish Water

***Failure to respond to a request for information and a
subsequent request for review***

**Applicant: JIG Limited
Authority: Scottish Water
Case No: 200701559
Decision Date: 7 April 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Fife
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Failure to respond to request for information and request for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002 (FOISA)

Facts

1. On 24 July 2007, JIG Limited (JIG) made an information request to Scottish Water, seeking for each of the years 2000/1 to 2006/7 an annual tally of the number of overflow events from each combined sewer overflow on a specified route in Oban.
2. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant here. While it is possible that the information in question is environmental information as defined in The Environmental Information (Scotland) Regulations 2004 (the EIRs), the same timescale is laid down in the equivalent regulation 5(2)(a) of the EIRs.
3. Scottish Water responded to JIG on 27 September 2007. In this response Scottish Water provided an update on the efforts it was making with a view to fully responding to JIG's request for information, while confirming that as it was unable to provide the requested information at that point JIG had the right to treat the response as a "deemed refusal" of the request and request a review. It made no reference to the information requested being environmental information as defined in the EIRs, and in any event did not extend the time available for a response to JIG (as it could have done under regulation 7 of the EIRs).
4. On 8 October 2007, JIG wrote to Scottish Water asking it to carry out a review.
5. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review. The same timescale is laid down in the equivalent regulation 16(4) of the EIRs.
6. Scottish Water also failed to respond to JIG's request for review and on 21 November 2007 JIG submitted an application to the Scottish Information Commissioner for a decision on this matter, in terms of section 47(1) of FOISA.



7. The case was validated by establishing that JIG had made a valid information request to a Scottish public authority and had applied to the Commissioner only after asking the authority to review its failure to respond to their request. The case was then allocated to an investigating officer.
8. Efforts were subsequently made by the investigating officer to reach a settlement between JIG and Scottish Water, but considerable time passed in which Scottish Water failed to provide a full response to JIG. In response to this situation, JIG requested that the Commissioner return to investigating its application with a view to proceeding with a decision.
9. On 17 March 2008, the investigating officer notified Scottish Water formally, in terms of section 49(3)(a) of FOISA, of the application made by JIG and asked for its comments on the application.
10. Scottish Water responded on 31 March 2008. In its response, Scottish Water accepted that there had been a procedural breach given that no formal decision was communicated to JIG within the timescales prescribed under legislation. Scottish Water went on to add that steps were being taken to conduct a review, acknowledging that it was required to do this within the relevant statutory timescale. .
11. To date, this Office has received no intimation that Scottish Water has carried out a review. As indicated above, the time available for doing so has long since expired, whether the information in question falls properly under FOISA or the EIRs.

Decision

The Commissioner finds that Scottish Water failed to respond to JIG's request for information within the 20 working days allowed by section 10(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) (or, if the information requested is properly considered to be environmental information as defined in The Environmental Information (Scotland) Regulations 2004 (the EIRs), regulation 5(2)(a) of the EIRs).

The Commissioner also finds that Scottish Water failed to respond to JIG's request for review within the 20 working days allowed under section 21(1) of FOISA (or, if the information requested is properly considered to be environmental information as defined in the EIRs, regulation 16(4) of the EIRs).

In failing to comply with these timescales Scottish Water has failed to comply with Part 1 of FOISA (or, if the information requested is properly considered to be environmental information as defined in the EIRs, the EIRs).



While the Commissioner notes that Scottish Water agreed to carry out a review, it has still not done so and therefore he requires it to carry out a review and notify JIG of its decision on review, within 45 days after the date of intimation of this decision notice.

Appeal

Should either JIG or Scottish Water wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any appeal must be made within 42 days after the date of intimation of this notice.

Euan McCulloch
Deputy Head of Investigations
7 April 2008