

Decision Notice 018/2022

Scotland's Future Fisheries Management Strategy – failure to respond

Applicant: The Applicant

Public authority: Scottish Ministers

Case Ref: 202200050



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Ministers (the Ministers) (Marine Scotland) for information concerning the Scottish Government's launch of Scotland's Future Fisheries Management (FFM) Strategy which sets out the Ministers' approach to managing sea fisheries in partnership with their stakeholders in relation to balancing environmental, social and economic interests.

This decision finds that the Ministers failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The Commissioner has ordered the Ministers to comply with the requirement for review.

Background

1. The Applicant made an information request to the Ministers on 6 July 2021.
2. The Ministers did not respond to the information request.
3. On 5 August 2021 and on 9 September 2021, the Applicant wrote to the Ministers chasing up their response and requiring a review of their failure to respond.
4. The Applicant did not receive a response to their requirement for review.
5. The Applicant wrote to the Commissioner, stating that they were dissatisfied with the Ministers' failures 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. On 13 January 2022, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
7. The Commissioner received submissions from the Ministers on 26 January 2022. These submissions are considered below.

Commissioner's analysis and findings

8. 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 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.
9. In their submissions to the Commissioner, the Ministers confirmed that, due to an administrative error, the Applicant's requirement for review was overlooked and this error was only identified when they received notification of the Applicant's appeal to the Commissioner. They confirmed that the requirement for review had been received via an email address linked to their case management system, but this return email address was not routinely monitored.

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

10. The Ministers explained that, in order to mitigate against the risk of failing to identify future information requests and requirements for review submitted via this email address, they were taking action to automatically advise senders of the correct email address to use for information requests. The Commissioner welcomes the steps that are being put in place.
11. The Ministers confirmed that Marine Scotland was now dealing with the requirement for review and a response would be issued to the Applicant as soon as possible, with a copy provided to the Commissioner.
12. Section 10(1) of FOISA 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. The same timescale is laid down by regulation 5(2)(a) of the EIRs.
13. It is a matter of fact that the Ministers did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
14. 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. Again, 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.
15. It is a matter of fact that the Ministers did not provide a response to the Applicant'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.
16. 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 Ministers failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 and regulation 16.
17. The Commissioner recommends that the Ministers consider whether it would be appropriate to apologise to the Applicant for their failure to comply.

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 with the Environmental Information (Scotland) Regulations (the EIRs) in dealing with the information request made by the Applicant.

In particular, the Ministers failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner requires the Ministers to respond to the Applicant's requirement for review, by **Wednesday 16 March 2022**.

Appeal

Should either the Applicant 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.

Enforcement

If the Scottish Ministers (the Ministers) fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Ministers as if they had committed a contempt of court.

Wendy Snedden
Freedom of Information Officer

2 February 2022

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