

Decision Notice 064/2022

Emissions data for Glasgow Recycling & Renewable Energy Centre for the years 2019 to 2021 – failure to respond

Applicant: The Applicant

Public authority: Scottish Environment Protection Agency

Case Ref: 202200396



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Environment Protection Agency (SEPA) for information about emissions data for the Glasgow Recycling & Renewable Energy Centre for the years 2019 to 2021. This decision finds that SEPA failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that SEPA failed to comply with the Applicant's requirement for review within the timescale set down by FOISA and the EIRs.

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

Background

1. The Applicant made an information request to SEPA on 21 January 2022.
2. SEPA acknowledged the information request but did not respond to it.
3. On 3 March 2022, the Applicant wrote to SEPA, requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to its requirement for review.
5. The Applicant wrote to the Commissioner on 4 April 2022, stating that it was dissatisfied with SEPA's 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 5 April 2022, SEPA was notified in writing that an application had been received from the Applicant and was invited to comment on the application.
7. The Commissioner received submissions from SEPA on 21 April 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. SEPA acknowledged that it had not responded to the Applicant's information request or requirement for review on time.
10. It explained that a variety of factors had contributed to this, in particular the continued office closure and restrictions due to Covid-19 and the impact of the criminal cyber-attack against SEPA on 24 December 2020.
11. 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

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

subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.

12. It is a matter of fact that SEPA did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
13. 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.
14. SEPA provided a partial response to the requirement for review on 5 May 2022, with an apology for the delay, advising the Applicant that it was continuing to work towards providing a complete response.
15. It is a matter of fact that SEPA did not provide a full 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.
16. The remainder of section 21 and regulation 16 set out the requirements to be followed by a Scottish public authority in carrying out a review. As a complete review has not been carried out in this case, the Commissioner finds that SEPA failed to discharge these requirements: he now requires a complete review to be carried out in accordance with section 21 and regulation 16.

Decision

The Commissioner finds that the Scottish Environment Protection Agency (SEPA) 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, SEPA 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 SEPA to carry out a full review and issue a response, by **29 July 2022**.

Appeal

Should either the Applicant 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.

Enforcement

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

Euan McCulloch
Deputy Head of Enforcement

14 June 2022

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