

Decision Notice

Decision 120/2018: Salmon and Trout Conservation Scotland and the Scottish Ministers

Scadabay Inspections: failure to respond within statutory timescales

Reference No: 201801191

Decision Date: 6 August 2018



Scottish Information
Commissioner

Summary

The Scottish Ministers (the Ministers) were asked for all correspondence, emails and other communications with any other party concerning two Scadabay inspections or “the 2016 Scadabay escape”.

This decision finds that the Ministers failed to respond to both the information request in time and the 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

Date	Action
11 May 2018	Salmon and Trout Conservation Scotland (S&TCS) made an information request to the Ministers.
14 June 2018	The Ministers responded to the information request.
19 June 2018	S&TCS wrote to the Ministers requiring a review of their decision.
27 June 2018	Although the Ministers sent a reply, S&TCS did not receive a response to their requirement for review.
6 July 2018	S&TCS wrote to the Commissioner’s Office, stating that they were dissatisfied with the Ministers’ 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.
17 July 2018	The Ministers were notified in writing that an application had been received from S&TCS and were invited to comment on the application.
30 July 2018	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner’s analysis and findings

1. 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.

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

2. 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.
3. It is a matter of fact that the Ministers did not provide a response to S&TCS'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.
4. 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.
5. It is a matter of fact that the Ministers did not provide a response to S&TCS'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.
6. 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/regulation 16.
7. The Ministers acknowledged that they had not provided S&TCS with a response to their requirement for review (and apologised to the Commissioner that a response was not issued within the statutory timescales).
8. The Ministers explained that S&TCS's requirement for review had not been recognised as one and therefore had been missed. They confirmed that a response was being prepared. No review response had been issued at the date of this decision.
9. The Commissioner requires the Ministers to issue a response to the requirement for review from S&TCS, and recommends that the Ministers consider whether it would be appropriate to apologise to S&TCS for their failure to comply with the statutory timescales for response.

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) when responding to the information request made by S&TCS.

The Ministers failed to respond to the request for information within 20 working days. In doing so, they failed to comply with section 10(1) of FOISA and regulation 5(2) of the EIRs.

The Ministers also failed to respond to requirement for review within the timescales laid down by sections 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Scottish Ministers (the Ministers) to provide a response to the requirement for review, by **20 September 2018**.

Appeal

Should either Salmon and Trout Conservation Scotland (S&TCS) 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) fails 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.

Alison Davies
Deputy Head of Enforcement

6 August 2018

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