



Decision Notice 095/2022

Emissions data for Glasgow Recycling & Renewable Energy Centre for the years 2018 to 2021 – failure to respond

Applicant: The Applicant

Authority: Scottish Environment Protection Agency

Case Ref: 202200702

Summary

The Applicant asked the Authority for information about emissions data for the Glasgow Recycling & Renewable Energy Centre for the years 2018 to 2021. This decision finds that the Authority 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 the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA and the EIRs.

Background

1. The Applicant made an information request to the Authority on 25 March 2022.
2. The Authority did not respond to the information request.
3. On 16 May 2022, the Applicant wrote to the Authority 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 17 June 2022, 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 22 June 2022.
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 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. The Commissioner received submissions from the Authority. These submissions are considered below.
10. The Authority acknowledged that it did not respond to Applicant's information request and requirement for review within statutory timescales.
11. The Authority explained that these failures were broadly due to the continuing impact of office closure and restrictions due to COVID-19, and the impact of the criminal cyber-attack against the Authority on 24 December 2020.
12. The Authority also submitted that the initial request was not received because it was sent to an email address, used for a short time in the aftermath of the cyber- attack, which was now defunct and could not be accessed by Authority staff.
13. Following receipt of the Applicant's requirement for a review (sent to the Authority's current and accessible email address), the Authority informed that Applicant that it had not received the initial request, for the reasons stated reasons above, but would honour the initial submission date of 25 March 2022.
14. The Authority further submitted that the request was substantial, with over 100 documents in scope, but that it was working to complete the response as a priority.
15. 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.
16. It is a matter of fact that the Authority 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.
17. 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.

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

18. 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.
19. 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 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 in accordance with section 21 and regulation 16.

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 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)(a) and 16(4) of the EIRs. The Commissioner requires the Authority to issue a response, by **4 November 2022**.

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.

Euan McCulloch
Deputy Head of Enforcement

20 September 2022