



Decision Notice 192/2024

Generation data for the Hydro Ness Archimedes screw plant – failure to respond

Applicant: The Applicant

Authority: Highland Council

Case Ref: 202401021

Summary

The Applicant asked the Authority for information relating to generation data for the Hydro Ness Archimedes screw plant since it became operational in May 2022. This decision finds that the Authority failed to respond to the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

1. The Applicant made an information request to the Authority on 26 June 2024.
2. The Authority responded to the information request on 27 June 2024, informing the Applicant that it did not hold the information requested as the River Ness Hydro Scheme is operated and maintained by High Life Highland.
3. On 28 June 2024, the Applicant wrote to the Authority requiring a review of its decision as he had submitted the information request to High Life Highland only to be directed back to the Authority as High Life Highland stated it did not hold the information.
4. The Applicant did not receive a response to his requirement for review.
5. On 28 July 2024, the Applicant wrote to the Commissioner, stating that he 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 2 August 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority confirmed that it had incorrectly informed the Applicant that responsibility for the River Ness Hydro Scheme lay with High Life Highland.
10. The Authority's Customer Resolution and Improvement Manager met with High Life Highland to agree a protocol for managing requests relating to the River Ness Hydro Scheme and to avoid further confusion.
11. The Authority confirmed that it is working on providing a response to the Applicant's requirement for review.
12. 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](#)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.
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. 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.
15. 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.
16. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

¹ <https://www.foi.scot/decision-2182007>

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 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 Authority to respond to the Applicant's requirement for review, by **21 October 2024**.

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.

Cal Richardson
Deputy Head of Enforcement

4 September 2024