

Decision Notice

Decision 070/2016: Mr Iain Lawrie and Aberdeenshire Council

Access to datasets held under the INSPIRE (Scotland) Regulations 2009

Reference No: 201501539

Decision Date: 21 March 2016



Scottish Information
Commissioner

Summary

On 9 and 20 July 2015, Mr Lawrie asked Aberdeenshire Council (the Council) for a list of the datasets available to download under INSPIRE.

The Council directed Mr Lawrie to external agency websites and advised him to complete an online request form to pursue his enquiry. Mr Lawrie asked the Council to reconsider its response. The Council responded, telling him that the data he sought was otherwise available to him. Mr Lawrie was dissatisfied and applied to the Commissioner for a decision on this point.

The Commissioner investigated and found that the Council acted in a way which was incompatible with regulation 8 of INSPIRE in its response to Mr Lawrie's request. This was because the Council did not have adequate discovery, view and download services to access the spatial data held by it. She required the Council to put in place provision to ensure that spatial data was publicly available and accessible, as required by the INSPIRE regulations, by 31 January 2017.

Relevant statutory provisions

The INSPIRE (Scotland) Regulations 2009 (INSPIRE) regulations 8(1), (2) and (4) (Network services); 12(1) and (2)(a), (c), (f) and (i) (Enforcement and appeals in relation to public access)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 9 July 2015, Mr Lawrie wrote to the Council, asking it to provide a list of the datasets it held for download under INSPIRE.
2. On 14 July 2015, the Council informed Mr Lawrie that the only spatial data it monitored was that relating to air quality. It provided him with a web-link to where he could read the latest air quality report for its area, and also links to two other external agency websites containing spatial data relating to Aberdeenshire.
3. Mr Lawrie wrote again to the Council on 20 July 2015, clarifying that what he was looking for was a way to download the complete spatial datasets held by the Council.
4. The Council responded on 21 July 2015 and advised Mr Lawrie that there were a number of datasets on species and habitat accessible through the North East Scotland Biological Records Centre (NESBReC)¹ website, asking him to use the online data request form on that website to pursue his request.
5. On 27 July 2015, Mr Lawrie wrote to the Council again, stating that it had not provided him with the access he required and asking for a review.
6. On 21 August 2015, the Council responded to his request for a review. It responded under the Freedom of Information (Scotland) Act 2002 (FOISA), but also confirmed that it was

¹ <http://www.nesbrec.org.uk/>

treating his review request as a complaint under regulation 14 of INSPIRE. In this regard, it concluded that it had produced as much information as it had available.

7. Mr Lawrie wrote to the Commissioner on 21 August 2015. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 12 of INSPIRE, Part 4 of FOISA applies to the enforcement of INSPIRE as it applies to the enforcement of FOISA, subject to specified modifications. Mr Lawrie stated he was dissatisfied with the way in which the Council had dealt with his enquiry because he did not consider the Council had provided links to its datasets which met the requirements of INSPIRE.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr Lawrie had made a request to a Scottish public authority and had exhausted the authority's complaints procedure before applying to her for a decision.
9. On 24 September 2015, the Council was notified in writing that Mr Lawrie had made a valid application. The case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, with a view to explaining the availability and accessibility of its spatial data discovery, view and download services.
11. The Council responded, accepting that it had failed to establish and operate adequate spatial data discovery, view and download services to satisfy the terms of regulation 8 of INSPIRE. The Council provided the Commissioner with its timetabled plan to rectify this.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr Lawrie and the Council. She is satisfied that no matter of relevance has been overlooked.
13. The Council's responsibilities in respect of spatial data discovery, view and download services under INSPIRE are laid out in regulation 8. Regulation 8(1) requires a Scottish public authority to establish and operate such services, as described in regulation 8(2). These provisions also cover other services, but the Commissioner considers the discovery, view and download services to be the ones covered by Mr Lawrie's request.
14. Regulation 8(4)(c) of INSPIRE requires Scottish public authorities to have all the services described in regulation 8(2) "available to the public and accessible via the internet or any other appropriate means of telecommunication". The Council acknowledged that it had not done this, so the Commissioner must find that it failed to comply with regulation 8(4)(c) of INSPIRE in responding to Mr Lawrie's request.
15. The Commissioner discussed this failure with the Council and asked it to provide assurance that it would secure compliance with regulation 8(4)(c) within a reasonable timescale. The Council provided the Commissioner with a plan for meeting these obligations, which the Commissioner accepts as reasonable in the circumstances. This provides for publication of data by 31 January 2017. The Commissioner recommends that the plan is published on the Council's website.

Decision

The Commissioner finds that Aberdeenshire Council (the Council) acted in a way which was not compatible with regulation 8(4)(c) of the INSPIRE (Scotland) Regulations 2009, by failing to establish and operate adequate spatial data discovery, view and download services as sought by Mr Lawrie.

The Commissioner therefore requires the Council to put in place publicly available and accessible discovery, view and download services for the spatial data it holds, in accordance with the implementation plan it has provided, by no later than 31 January 2017.

Appeal

Should either Mr Lawrie or Aberdeenshire Council 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 Aberdeenshire Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

21 March 2016

The INSPIRE (Scotland) Regulations 2009

8 Network Services

- (1) A Scottish public authority or a third party must establish and operate the services described in paragraph (2) in relation to any spatial data set or spatial data service—
 - (a) for which that authority or third party is responsible, and
 - (b) in relation to which metadata have been created in accordance with regulation 7 and the Metadata Regulation.
- (2) The services are—
 - (a) discovery services—
 - (i) making it possible to search for spatial data sets and spatial data services on the basis of the content of the corresponding metadata and to display the content of the metadata, and
 - (ii) making it possible to search according to, as a minimum, the search criteria specified in paragraph (3) (used alone or in combination);
 - (b) view services making it possible, as a minimum, to display, navigate, zoom in and out, pan, or overlay viewable spatial data sets and to display legend information and any relevant content of metadata;
 - (c) download services, enabling copies of spatial data sets, or parts of such sets, to be downloaded and, where practicable, accessed directly;
 - (d) transformation services, enabling spatial data sets to be transformed with a view to achieving interoperability; and
 - (e) services allowing spatial data services to be invoked.
- ...
- (4) The services specified in paragraph (2) must –
 - (a) take into account relevant user requirements;
 - (b) be easy to use; and
 - (c) subject to regulation 10, be available to the public and accessible via the internet or any other appropriate means of telecommunication.
- ...

12 Enforcement and appeals in relation to public access

- (1) The provisions of the Act [the Freedom of Information (Scotland) Act 2002] specified in paragraph (2) apply for the purposes of regulation 8(4)(c) and 10 as they apply for the purposes of the Act, but with the modifications specified in the Schedule to these Regulations.
 - (2) Those provisions are –
 - (a) section 47 (application for decision by Commissioner);
 - ...
 - (c) section 49 (Commissioner's decision);
 - ...
 - (f) section 53 (failure to comply with notice);
 - ...
 - (i) section 56 (appeal against notices)
- ...

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