

Decision Notice 073/2022

Metal recycling plant – failure to respond

Applicant: The Applicant

Public authority: Scottish Environment Protection Agency

Case Ref: 202200616



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Protection Environment Agency (SEPA) for licences, authorisations and permits (including any variations) issued by SEPA to the owner of a specified recycling plant along with noise and dust monitoring data. This decision finds that SEPA failed to respond to the request and 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).

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

Background

1. The Applicant made an information request to SEPA on 18 March 2022
2. SEPA did not respond to the information request.
3. On 22 April 2022, the Applicant wrote to SEPA requiring a review of its failure to respond.
4. The Applicant did not receive a response to their requirement for review.
5. The Applicant wrote to the Commissioner on 27 May 2022, stating that they were 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 30 May 2022, SEPA was notified in writing that an application had been received from the Applicant and were invited to comment on the application.
7. The Commissioner received submissions from SEPA on 16 June 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 on time.
10. It accepted that the information request was submitted by the Applicant (and received by SEPA). It explained that the request was not initially received by the SEPA Contact Centre until the Applicant had provided evidence of submitting the request. Due to an unexplained issue with the online contact form, the request was not identified by SEPA, resulting in it not being received by the Access to Information Team to respond to.

¹ [Decision 218/2007 | Scottish Information Commissioner \(itspublicknowledge.info\)](#)

11. It explained that other factors had also contributed to this failure, 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.
12. 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.
13. 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.
14. 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.
15. SEPA provided a partial response to the requirement for review on 16 June 2022, with an apology for the delay, advising the Applicant that it was continuing to work towards providing a complete response.
16. It is a matter of fact that SEPA 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.
17. 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 on request 3 (noise monitoring data) in this case, the Commissioner finds that SEPA 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 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 respond to request 3, by **Wednesday 3 August 2022**.

Appeal

Should either the Applicant or the Scottish Environment Protection Agency 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 Scottish Environment Protection Agency (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.

Jill Walker
Freedom of Information Officer

22 June 2022

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