



Decision Notice 044/2023

Communications relating to Cambo oil field – failure to respond

Applicant: The Applicant

Authority: Scottish Ministers

Case Ref: 202300412

Summary

The Applicant asked the Authority for information about communications between Nicola Sturgeon, or her private secretary, and senior executives at Offshore Energies UK (OEUK) concerning plans for Cambo oil field. This decision finds that the Authority failed to respond to the 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 12 August 2022.
2. The Authority responded to the information request on 27 September 2022.
3. On 11 October 2022, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 31 March 2023, 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 3 April 2023.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. 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.
10. In its submissions to the Commissioner, the Authority explained that the request for review was only identified on 17 March 2023 when it received a follow-up email from the Applicant. The Authority confirmed that a response to the Applicant is being prepared by the appropriate business area.
11. The initial review request was received via an email address which is linked to the Authority's case management system. This return email address is not routinely monitored, but the Authority advised that the Applicant would have received the following automated message:

Please do not use this email address for new enquiries or requests. This mail mailbox is not monitored and should only be used when instructed to do so as part of an active enquiry. If you have a new enquiry of request, including where it relates to a closed case, please visit, <https://www.gov.scot/about/contact-information/> for our contact details.
12. The Commissioner recommends that the Authority consider amending the current automated response, as it does not make it absolutely clear that a request for review should not be sent to a specific email address. The Authority confirmed that work was currently in progress to amend the wording.
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.itspublicknowledge.info/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 section 21(1) of FOISA and regulation 16(4) of the EIRs. The Commissioner requires the Authority to provide a response by **30 June 2023**.

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.

Colin MacFadyen
(Acting) Deputy Head of Enforcement

16 May 2023