



Scottish Information
Commissioner

Decision 185/2007 – Mr Gordon Watson and Scottish Water

Greenlaw Urban Expansion Area, Newton Mearns

Applicant: Mr Gordon Watson

Authority: Scottish Water

Case No: 200701213

Decision Date: 10 October 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Failure of Scottish Water to respond to a request for information and a request for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002 (FOISA)

Facts

1. On 25 April 2007, Mr Gordon Watson sent an email to Scottish Water's FOI Unit requesting copies of all correspondence held by Scottish Water in relation to the Greenlaw Urban Expansion Area, Newton Mearns. Mr Watson advised that his request included, but was not restricted to, correspondence relating to four named planning applications, and correspondence between Scottish Water, East Renfrewshire Council, and the Greenlaw Partnership (or any of its member, agents, consultants, etc.)
2. When no response was received within the statutory time period of 20 working days, Mr Watson sent a reminder to Scottish Water's FOI Unit, by email, on 24 May 2007.
3. On 28 May 2007 Scottish Water responded, acknowledging Mr Watson's request and stating that the information would be sent to him once the documents had been received from the relevant department.
4. No further communication was received by Mr Watson and on 5 June 2007 he sent a request for a review, by email, to Scottish Water's FOI Unit. When no response was received within 20 working days, Mr Watson sent another email (11 July 2007) as a reminder.
5. On 3 September 2007, Mr Watson applied to the Scottish Information Commissioner, requesting that he investigate Scottish Water's failure to respond to his request for information and request for a review within the relevant timescales laid down in FOISA.
6. The Commissioner notified Scottish Water of the application made by Mr Watson and invited its comments (all in terms of section 49(3)(a) of FOISA) on 18 September 2007. A response was received from Scottish Water on 3 October 2007.



7. In its response, Scottish Water accepted that it had not responded to Mr Watson's request for information in line with section 10(1) of FOISA as it should have done. It attributed this failure to an administrative error and advised that improved monitoring procedures had been put in place as a consequence. Scottish Water also advised that it had now provided Mr Watson with a response to his request and provided the Commissioner with a copy of this.
8. In its response, Scottish Water also acknowledged that there had been a number of errors in handling Mr Watson's information request. These were detailed as follows:
 - a) There had been a delay in circulating Mr Watson's request to the relevant department.
 - b) Once the request was circulated, it had been overlooked by the individual responsible for collating and providing the response.
 - c) Scottish Water's FOI Unit had failed to remind the relevant department that a response was required.
 - d) This failure was partly due to the fact that Mr Watson's emails of 5 June and 11 July 2007 had been quarantined as "spam".
9. Scottish Water explained that it receives a substantial number of spam emails and it is impracticable to carry out a manual search and check procedure for these emails. It has in place a spam filter which is designed to exclude emails from generic service providers such as "Yahoo" or "Hotmail".
10. Scottish Water advised that it was now taking steps to remove the filter specifically from its FOI Unit's email address to try and prevent this problem from happening again. Scottish Water also advised that it has instigated procedures to improve compliance in relation to FOI requests submitted to the FOI Unit, and explained the procedure now in place.
11. Scottish Water provided Mr Watson with a full response to his request on 2 October 2007.
12. Mr Watson was not satisfied that the terms of the apology contained in this letter were an adequate acknowledgement of Scottish Water's failure to comply with the provisions of FOISA, and confirmed that he wished the Commissioner to issue a decision notice. Mr Watson asked the Commissioner to note that this was not the first time that Scottish Water had taken an excessive length of time to respond to one of his FOI requests.



The Commissioner's Analysis and Findings

13. Under section 49(1) of FOISA, except where an application is frivolous or vexatious, or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a decision notice to both the applicant and the public authority.
14. The Commissioner is satisfied that Mr Watson made a request for information to Scottish Water on 25 April 2007 which was valid in terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 5 June 2007.
15. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information. Scottish Water failed to respond to Mr Watson's request for information within that period.
16. The Commissioner is satisfied that Mr Watson submitted a valid request for a review to Scottish Water in line with section 20 of FOISA.
17. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review. Scottish Water failed to respond to Mr Watson's request for review within that period.
18. The Commissioner notes the explanation provided by Scottish Water, and that Scottish Water has taken steps to improve compliance with FOISA. Because such steps have been taken and because a response has been issued to Mr Watson, the Commissioner does not require Scottish Water to take further action on this occasion.
19. However, the Commissioner would advise Scottish Water that, while appreciating the technical difficulties presented by the problem of spam email, any request for information in recorded form which is made to Scottish Water must be dealt with according to the provisions of FOISA.
20. Section 1(1) of FOISA entitles individuals to request and receive information from a Scottish public authority. Section 8 of FOISA sets out simple requirements on a requestor; they must make their request in writing or some form capable of permanency, describe the information sought, and provide a name and address for correspondence. While an authority can ask people to make their request through a preferred channel such as Scottish Water's FOI Unit, there is no obligation for them to do so, and a request could be directed to any member of staff. An authority must ensure it is able to recognise when a valid request is received and act upon it.



Decision

The Commissioner finds that Scottish Water did not deal with Mr Watson's request for information in accordance with the following requirements of Part 1 of FOISA:

- Section 10(1), which states that a Scottish public authority must comply promptly with a request for information and in any event by not later than the twentieth working day after the receipt by the authority of the request and
- Section 21(1), which states that a Scottish public authority must comply promptly with a request for review and in any event by not later than the twentieth working day after the receipt by the authority of the request for review.

As Scottish Water has taken steps to improve its compliance with FOISA and has responded to Mr Watson's information request, the Commissioner does not require Scottish Water to take any further action on this occasion.

Appeal

Should either party wish to appeal this decision, there is an appeal to the Court of Session on a point of law only. Any appeal must be made within 42 days after the date of intimation of this notice.

Margaret Keyse
Head of Investigations
10 October 2007