

Decision Notice



Decision 097/2011 Little Cumbrae Estate Limited and the Solway Shellfish Management Association

Verification and recording of cockle fishing and landings

Reference No: 201100698
Decision Date: 24 May 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether the Solway Shellfish Management Association (the SSMA) complied with the technical requirements of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to an information request made on behalf of Little Cumbrae Estate Limited.

Background

1. On 8 December 2010, Simpson and Marwick, Solicitors, wrote to the SSMA on behalf of their client Little Cumbrae Estate Limited, requesting the following information: “the tonnage of cockles unloaded at Garlieston throughout the current fishing season”. On 11 January 2011, Iain Smith, Solicitors, responded on behalf of the SSMA.
2. On 3 February 2011, Simpson and Marwick wrote again to the SSMA on behalf of Little Cumbrae Estate Limited. They referred to the response to the previous request and made a new request for information about the mechanism for verifying and recording the fishing and landing of the cockles.
3. On 10 March 2011, Simpson and Marwick wrote to the SSMA on behalf of Little Cumbrae Estate Limited, to point out that no reply had been received to the letter of 3 February 2011 and to request a review.
4. No response was received from the SSMA to the request for review, and on 26 April 2011 Simpson and Marwick wrote to the Commissioner’s Office on behalf of Little Cumbrae Estate Limited, stating that their client was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
5. The application was validated by establishing that Little Cumbrae Estate Limited had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 4 May 2011, the SSMA was notified in writing that an application had been received from Little Cumbrae Estate Limited and was invited to comment on the application.



- No response was received from the SSMA within the period specified in the letter.

Commissioner's analysis and findings

- The SSMA is (and has acknowledged that it is) a Scottish public authority in terms of the EIRs but is not covered by FOISA. In this case, the Commissioner is satisfied that the information requested is likely (on any reasonable interpretation) to be environmental information as defined in Regulation 2(1) of the EIRs.
- Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
- Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days after the date of receipt of the applicant's representations to comply with a requirement for review, subject to exceptions which are not relevant in this case. Other parts of regulation 16, particularly paragraphs (3) and (5), govern the review process and the giving of notice of the outcome to the applicant (see Appendix below).
- Little Cumbrae Estate Limited received no response to its request for information (of 3 February 2011) or its requirement for review. The Commissioner therefore finds that the SSMA failed to comply with the statutory timescales prescribed in regulation 5(2)(a) and regulation 16(4) of the EIRs.
- The Commissioner requires the SSMA to provide a response to the requirement for review from Little Cumbrae Estate Limited which satisfies the requirements of regulation 16 of the EIRs.

DECISION

The Commissioner finds that the Solway Shellfish Management Association (the SSMA) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) by failing to respond to the request for information from Little Cumbrae Estate Limited within the timescale laid down by regulation 5(2)(a) of the EIRs.

The Commissioner also finds the SSMA failed to comply with the requirement for review from Little Cumbrae Estate Limited as required by regulation 16 of the EIRs.

The Commissioner therefore requires the SSMA to respond to the requirement for review from Little Cumbrae Estate Limited, in accordance with the requirements of regulation 16 of the EIRs, by 15 July 2011.

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Appeal

Should either Little Cumbrae Estate Limited or the Solway Shellfish Management Association wish to appeal against this decision, there is an 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 notice.

Euan McCulloch
Deputy Head of Enforcement
24 May 2011



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (2) The duty under paragraph (1)-
 - (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and
 - (b) is subject to regulations 6 to 12.

...

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.
- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.