

Decision Notice

Decision 192/2015: Mr Andy Philip and the Scottish Ministers

Genetically modified technology in agriculture:

Failure to respond within statutory timescales

Reference No: 201502117

Decision Date: 11 December 2015



Scottish Information
Commissioner

Summary

On 10 August 2015, Mr Philip asked the Scottish Ministers (the Ministers) for information about correspondence and advice between former chief scientific advisers and civil servants regarding genetically modified technology in agriculture. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Ministers failed to comply with Mr Philip requirement for review within the timescale set down by FOISA/the EIRs.

Background

Date	Action
10 August 2015	Mr Philip made an information request to the Ministers.
7 September 2015	The Ministers wrote to Mr Philip, purporting to extend the time for responding to the request by a further 20 working days.
	The Ministers did not respond to the information request.
8 October 2015	Mr Philip wrote to the Ministers, requiring a review of their decision in respect of their failure to respond.
	Except for an acknowledgement, Mr Philip did not receive a response to his requirement for review.
10 November 2015	Mr Philip wrote to the Commissioner's office, stating that he was dissatisfied with the Minister'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.
25 November 2015	The Ministers were notified in writing that an application had been received from Mr Philip and were invited to comment on the application.
9 December 2015	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. 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.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

2. The Ministers acknowledged that they had not responded to Mr Philip's request and requirement for review within the statutory timescales, explaining this was due to a large number of similar requests received around the same time. They made no mention of whether it was appropriate to extend the timescale for responding to the request (under regulation 7 of the EIRs) and the Commissioner will proceed on the basis that the Ministers do not seek to rely on this provision.
3. 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.
4. It is a matter of fact that the Ministers did not provide a response to Mr Philip's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
5. 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.
6. It is a matter of fact that the Ministers did not provide a response to Mr Philip's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
7. The Ministers responded to Mr Philip's requirement for review on 7 December 2015, so the Commissioner does not require them to take any further action in relation to Mr Philip's application.
8. The Commissioner notes that the Ministers apologised to Mr Philip for its failure to respond to his request and review response.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Philip. In particular, the Ministers failed to respond to Mr Philip'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 does not require the Ministers to take any action in respect of these failures, in response to Mr Philip's application, given that a response has now been issued.

Appeal

Should either Mr Philip or the Scottish Ministers 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.

Euan McCulloch
Deputy Head of Enforcement

11 December 2015

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