

Decision Notice



Decision 045/2010 CaL Solutions (Billingham) Limited and Scottish Water

Failure to respond to requests and requests for review

Reference Nos: 201000172, 201000174, 201000175, 201000177, 201000178

Decision Date: 16 March 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether Scottish Water complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to five separate information requests made by CaL Solutions (Billingham) Limited.

Background

1. This decision considers the failure of Scottish Water to respond to five separate requests for information made by CaL Solutions (Billingham) Limited (CaL), which are detailed in turn below.
2. On 25 January 2010 CaL wrote to the Commissioner stating that it was dissatisfied with Scottish Water's failure to respond to the five requests and applying for a decision in terms of section 47(1) of FOISA.

Request 1 - case reference 201000172

3. On 22 October 2009, CaL sent an email to Scottish Water requesting the following information:
 - a) The recorded information held within the minutes of all board meetings of Scottish Water Horizons Ltd.
 - b) The recorded information held within all of the due diligence reports on acquisitions made by Scottish Water Horizons Ltd.
 - c) The recorded information held within the management account reports of Scottish Water Horizons Ltd.
 - d) The recorded information held within the Accounts of Scottish Water Horizons Ltd. relating to current assets and liabilities
4. Scottish Water did not respond and on 19 November 2009 CaL sent an email to Scottish Water requesting a review of its failure to respond. As 19 November was the twentieth working day following the submission of the request the request for review was invalid as it was received within the period allowed for a response in Section 10(1) of FOISA.
5. Scottish Water responded to CaL on 7 December 2009 acknowledging receipt of the request dated 22 October 2009 and indicating that the information had been collated but had to be reviewed prior to being sent to CaL.



6. CaL sent further email messages to Scottish Water seeking confirmation of the date when the information requested would be provided on 11 December 2009, 16 December 2009, 18 December 2009 and 21 December 2009. The email of 21 December contained a further (and this time valid) request that Scottish Water review its decision not to provide the information requested to CaL.
7. Scottish Water replied to CaL by email on 21 December 2009 apologising for the delay in responding indicating that the information to be supplied was being checked to ensure it did not include personal data, the release of which would breach the provisions of the Data Protection Act 1998.
8. CaL sent further email messages to Scottish Water seeking confirmation of when the information would be supplied to them on 5 January 2010, 11 January 2010 and 18 January 2010. CaL did not receive the information requested nor any substantive response to its request.

Request 2 - case reference 201000174

9. On 26 October 2009 CaL sent an email to Scottish Water requesting the following information:
 - a) A copy of the information contained within the administration arrangements put in place by Scottish Water for the following:
 - a.1) Scottish Water Contracting
 - a.2) Scottish Water Horizons Ltd.
 - a.3) Transfer costings between a.1 and a.2 above.
 - b) A copy of the information contained within the governance procedures for a.1, a.2 and a.3 above.
 - c) A copy of the information contained within the report or information provided to the Scottish Ministers as to the administrative arrangements that it has put in place as a result of the corporate governance arrangements.
 - d) A copy of the information set out in the itemized reports to the Scottish Ministers in which expenditure exceeded the thresholds set out in Schedule 1 of the Scottish water Governance Regulations.
 - e) A copy of all the information provided in documents relevant to the Scottish Water Governance Directions in respect of Scottish water and Scottish Water Horizons Ltd.
 - f) A copy of the information contained to show any separate amounts falling due within 12 months for Scottish water Horizons Ltd. Accounts for the financial year 2008-2009 and for 2007-2008.
10. Scottish Water acknowledged receipt of this request by email on 26 October 2009. On 22 December 2009, having received no substantive response to this request, CaL sent an email to Scottish Water requesting a review of its decision not to provide the information. Scottish Water acknowledged receipt of the request for review by email on 22 December 2009, indicating that the request was being handled by their legal department.
11. CaL did not receive any further response to this request from Scottish Water.



Request 3 – case reference 201000177

12. On 28 October 2009 (1011hrs) CaL sent an email to Scottish Water requesting the following information:

A copy of the information contained within all the documents possessed by Scottish Water for;

- 1) The generic and specific governance rules managing the transfer costing of work ordered by Scottish Water Horizons from Scottish Water and Scottish Water Contracting.
 - 2) The governance rules covering the transparency of contracts that are held with Scottish water Horizons Ltd and subcontracted to Scottish Water and Scottish Water Contracting.
 - 3) The governance rules and information concerning Quotations between Scottish Water and Scottish Water Horizons Ltd.
 - 4) Internal audit documents concerning the financial transactions between Scottish water, Scottish water Contracting and Scottish water Horizons Ltd.
 - 5) Contracts between the external companies and Scottish Water Horizons Ltd and Contracts between Scottish water Horizons Ltd. And Scottish Water and Scottish Water Contracting.
13. Scottish Water acknowledged receipt of this request by email on 28 October 2009 indicating that it had been forwarded to Scottish Water's freedom of information team for attention.
14. On 26 November 2009, not having received any further response, CaL sent an email to Scottish Water requesting a review of its decision not to supply the information requested. Scottish Water acknowledged receipt of the request for review by email later that day indicating that it had been forwarded to its legal department.
15. CaL did not receive any further response to this request from Scottish Water.

Request 4 - case reference 201000175

16. On 28 October 2009 (1725hrs) CaL sent an email to Scottish Water requesting the following information:

A copy of the information contained in the following associated with Scottish Water horizons Limited's 2008-2009 Accounts;

Proportion of the below attributable to trading with Scottish Water Contracting;

- 1) Turnover
- 2) Cost of sales
- 3) Gross profit
- 4) Operating profit
- 5) Non trading income
- 6) Interest payable
- 7) Retained profits



- 8) Stock
- 9) Trade debtors
- 10) Tangible fixed assets
- 11) Intangible assets
- 12) Miscellaneous current assets
- 13) Creditors falling within 1 year
- 14) Trade creditors

17. Scottish Water acknowledged receipt of the request by email on 29 October 2009 indicating that it had been forwarded to its legal department for attention. On 26 November 2009, not having received any further response, CaL sent an email to Scottish Water requesting a review of its decision not to supply the information requested. Scottish Water acknowledged receipt of the request for review by email later that day.
18. CaL did not receive any further response to this request from Scottish Water.

Request 5 – case reference 201000178

19. On 31 October 2009 CaL sent an email to Scottish Water requesting the following information with reference to Scottish Water Horizons Limited Financial Statements 31 March 2009:
 - a) A copy of all the information possessed in association with item 11 on page 11 of this document (which states the Company acquired the trading assets and liabilities of Scottish Water non core business for £3 million in cash).
 - b) A copy of all information possessed in relation to item 22 on page 19 (which states the Company has no contingent liabilities at the balance sheet date).
 - c) A copy of all information possessed in relation to item 23 on page 19 (which states the Company has taken advantage of the exemption in FRS 8).
 - d) A copy of all the information in respect of any trade debtors or debt at risk involved or transferred to Scottish Water Horizons Ltd as part of the above referenced acquisition process.
20. On 3 December 2009, not having received any response, CaL sent an email to Scottish Water requesting a review of its decision not to supply the information requested. Scottish Water acknowledged receipt of the request for review by email later that day indicating that it had been forwarded to its legal department.
21. On 22 December 2009 CaL sent a further email to Scottish Water indicating that they had not received the information requested and again asked Scottish Water to review their decision not to supply the information. Scottish Water acknowledged receipt of this further request for a review by email later that day, again indicating that the request was being dealt with by their legal department.
22. CaL did not receive any further response to this request from Scottish Water.



23. CaL's application of 25 January 2010 was validated in relation to each of the above requests for information by establishing that CaL had made each request to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to each request.
24. Each request was assigned to a separate case and these were then allocated to an investigating officer. The five cases were then conjoined for the purposes of investigation and this decision.

Investigation

25. On 10 February 2010, Scottish Water was notified in writing that an application had been received from CaL and was invited to comment on the application as required by Section 49(3)(a) of FOISA. It was also provided with copies of CaL's requests and requests for review.
26. Scottish Water responded on 26 February 2010, confirming that it had received Mr Clark's requests and requests for review. Scottish Water indicated that the five requests formed part of a series of requests that had been received from CaL in connection with an ongoing dispute between the companies. Scottish Water indicated that most of these requests had been dealt with immediately upon receipt however admitted that it had failed to respond to the five requests and requests for review subject of this decision notice within the statutory timescales laid down in FOISA. Scottish Water indicated that in respect of the five requests delays had occurred in collating the information, considering any exemptions that applied and where appropriate redacting information. Scottish Water confirmed that these processes were almost complete and intended to provide information, which it considered not to be exempt, within a few days.
27. The investigating officer contacted Scottish Water on 10 March 2010 and established that no substantive responses had yet been provided to CaL.

Commissioner's analysis and findings

28. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
29. Scottish Water did not provide a substantive response to any of the five CaL requests submitted on 22 October 2009, 26 October 2009, 28 October 2009 (2 requests) and 31 October 2009.



30. The Commissioner therefore finds that the Council failed to respond to CaL's requests for information of 22 October 2009, 26 October 2009, 28 October 2009 (2 requests) and 31 October 2009, within the 20 working days allowed under section 10(1) of FOISA.
31. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
32. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached
33. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA
34. Scottish Water acknowledged that it did not carry out any review of its decisions in response to the requests for review submitted by CaL respectively on 21 December 2009, 22 December 2009, 26 November 2009 (2 requests for review) and 3 December 2009. It did not therefore respond to CaL's requests for review, within the 20 working days allowed under section 21(1) of FOISA.
35. The Commissioner therefore finds that Scottish Water failed to carry out reviews in line with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA.
36. The Commissioner requires Scottish Water to conduct a review with respect to each of the five requests, to reach a decision on each request in terms of section 21(4)(c) of FOISA and to notify CaL of the outcomes in terms of section 21(5) of FOISA.

DECISION

The Commissioner finds that Scottish Water failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the five information requests made by CaL Solutions (Billingham) Limited (CaL), in particular by failing to respond to CaL's requests for information and requests for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.



The Commissioner therefore requires Scottish Water to conduct reviews in relation to each of CaL's five requests (which should be in terms of section 21(4)(c) of FOISA) and notify CaL of the outcomes of the reviews by 30 April 2010.

Appeal

Should either CaL or Scottish Water 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.

Claire Sigsworth
Deputy Head of Enforcement
16 March 2010



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates –
 - (a) confirm a decision complained of, with or without such modification as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...