

# Decision Notice



Decision 088/2010 CaL Solutions (Billingham) Limited and Scottish Water

Failure to respond to requests and requests for review

Reference Nos: 201000845 and 201001059

Decision Date: 14 June 2010

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
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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 two information requests made by CaL Solutions (Billingham) Limited.

## Background

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1. This decision considers the failure of Scottish Water to respond to two requests for information made by CaL Solutions (Billingham) Limited (CaL).

### **Request 1** – case reference number 201000845

2. On 28 January 2010, CaL sent an email to Scottish Water requesting a range of information in respect of Scottish Water Horizons Limited acquiring the trading assets and liabilities of Scottish Water's non-core business.

### **Request 2** – case reference number 201001059

3. On 15 March 2010, CaL sent an email to Scottish Water requesting minutes of specified meetings and financial information presented at those meetings.
4. Scottish Water did not respond to either of these requests and on 15 March 2010 (in respect of Request 1) and on 22 April 2010 (in respect of Request 2) CaL sent emails to Scottish Water requesting a review of its failure to respond.
5. CaL did not receive any responses to these requests for review.
6. On 19 April 2010 (in respect of Request 1) and on 24 May 2010 (in respect of Request 2), CaL wrote to the Commissioner stating that it was dissatisfied with Scottish Water's failure to respond to each of the requests and applying for a decision in terms of section 47(1) of FOISA.
7. CaL's applications of 19 April 2010 and 24 May 2010 were validated 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 failure to provide a response to each request.
8. The cases were then assigned to an investigating officer.



## Investigation

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9. On 13 May 2010 (in respect of Request 1) and on 27 May 2010 (in respect of request 2), 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.
10. Scottish Water responded on 4 June 2010 in respect of both requests, confirming that it had received CaL's requests and requests for review. Scottish Water stated that the requests formed part of a series of requests which had been received from CaL in connection with an ongoing dispute between the companies. Scottish Water indicated that the reason why it could not respond to the applicant's requests in this case was because of the multiple requests for information received from the applicant, some of which were overlapping and which were sent to people across the organisation. Scottish Water stated that the huge number of requests and the multiple people involved in processing those requests meant that it had not been possible for it to co-ordinate the work and issue responses within the required time limit.
11. Scottish Water also informed the investigating officer that it had sent a letter to CaL on 31 May 2010 notifying it that it had concluded for 93 listed requests (which included request 2, but not request 1), that the number and nature of these requests was such that it had judged these to be vexatious in terms of section 14(1) of FOISA. This letter went on to state that in relation to the outstanding requests for review, Scottish Water did not intend to carry out a review.
12. Scottish Water's letter also stated that if it had omitted to respond to any requests not detailed in the attached list, CaL should take that letter as a formal response to those requests. Although the attached list did not include request 1, the Commissioner understands from this comment that the approach described in paragraph 11 was also being applied to that request.

## Commissioner's analysis and findings

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13. 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.
14. Scottish Water did not provide substantives to response CaL's requests of 28 January 2010 and 15 March 2010.
15. The Commissioner therefore finds that the Council failed to respond to CaL's requests for information of 28 January 2010 and 15 March 2010 within the 20 working days allowed under section 10(1) of FOISA.



16. 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.
17. Section 21(8), however, provides that a public authority is not obliged to comply with a requirement for review in cases where the requirement itself is vexatious, or where the request is one with which, the authority is not required to comply, because it is vexatious by virtue of section 14(1).
18. Where an authority judges that section 21(8) is applicable, section 21(9) states that it must give the applicant notice of this within the 20 working day period allowed by section 21(1).
19. In this case, CaL neither conducted reviews in relation to request 1 and request 2 nor advised CaL that it had determined that it was not obliged to conduct reviews within the required timescale. However, it has since provided notice to CaL that it considers request 1 and request 2 to be vexatious, and that it does not intend to conduct a review.
20. The Commissioner therefore finds that Scottish Water failed to act in accordance with section 21 of FOISA, and, in particular by failing to provide notice to CaL in line with section 21(9), within the timescale specified in section 21(1).
21. As Scottish Water has now notified CaL of its decision in respect of request 1 and request 2, the Commissioner does not require Scottish Water to take any further action in respect of these technical breaches.

## 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 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) and (9) of FOISA.

As Scottish Water subsequently provided notice in terms of section 21(9) in response to CaL's requests for review, the Commissioner does not require Scottish Water to take any further action in respect of these technical breaches in response to this decision.



## **Appeal**

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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**  
**14 June 2010**



## Appendix

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### 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.

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##### 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.

...

##### 14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

....

##### 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.

...



- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
  - (a) the requirement is vexatious; or
  - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.