

Decision Notice



Decision 187/2012 Mr Neil Craig and the Scottish Environment Protection Agency

Evidence of radium at Dalgety Bay

Reference No: 201200997

Decision Date: 20 November 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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Summary

Mr Craig asked the Scottish Environment Protection Agency (SEPA) for information relating to radium in particles found at Dalgety Bay. SEPA advised that such information was available on its website. Mr Craig did not accept that SEPA had identified any information that it held within the scope of his request. Following an investigation, the Commissioner found that SEPA had provided Mr Craig with weblinks to all relevant, recorded information that it held.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definitions (a) to (c) and (f) of “environmental information”); 5(1) (Duty to make environmental information available on request)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 14 February 2012, Mr Craig emailed SEPA asking for any independent chemical or spectrographic evidence of radium in particles recovered by SEPA from Dalgety Bay.
2. SEPA responded on 14 March 2012, advising Mr Craig that all data on tests carried out on such particles was available on its website.
3. On 31 March 2012, Mr Craig emailed SEPA requesting a review of its decision. Mr Craig indicated that he did not believe the requested information was available on SEPA’s website.
4. SEPA notified Mr Craig of the outcome of its review on 4 May 2012. SEPA noted that its original response had not provided specific references to information other than to state it was available on SEPA’s website. Following its review, SEPA provided Mr Craig with more specific weblinks and additional information on the data contained within certain publications on its website.



5. On 19 May 2012, Mr Craig wrote to the Commissioner, stating that he was dissatisfied with the outcome of SEPA's review and applying to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (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.
6. The application was validated by establishing that Mr Craig 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

7. The investigating officer subsequently contacted SEPA, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, SEPA was asked to justify why it considered the information to which it had referred Mr Craig on its website met the terms of his request.
8. In response, SEPA provided submissions explaining why it considered that all relevant information had been identified, and why the specific information contained on its website fulfilled the terms of Mr Craig's request.
9. The relevant submissions received from both SEPA and Mr Craig will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Craig and SEPA and is satisfied that no matter of relevance has been overlooked.
11. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold, but which is not in fact held.
12. In his application to the Commissioner, Mr Craig disputed that the information he was seeking was available on SEPA's website. He argued that the information on SEPA's website produced no actual evidence of chemical or spectrographic analysis.



13. In its submissions, SEPA argued that Mr Craig's position that its website provided no evidence of chemical or spectrographic analysis was not borne out by the content contained within the reports and information published by SEPA relating to the presence of radium at Dalgety Bay, to which Mr Craig had been directed. SEPA submitted that the data and methodology underpinning the reports conformed to the recognised national and international standards and norms for such work. SEPA also provided an explanation of the process which had been undertaken in order to detect and analyse radioactive particles at Dalgety Bay.
14. The subject matter of the information under consideration in this case is complex and technical. However, expressed simply, the matter to be considered in this decision is whether recorded information of the type envisaged by Mr Craig, showing evidence of radium in particles at Dalgety Bay, exists and has been published on SEPA's website, thereby meeting the terms of his request.
15. Before setting out her conclusions, the Commissioner would note that it falls outwith her remit to comment on the scientific methodology employed by SEPA, the accuracy or veracity of any laboratory analysis undertaken, how SEPA has chosen to interpret the information it holds or whether it is entitled to make public statements based on the information it holds.
16. Similarly, the Commissioner cannot arbitrate in a dispute regarding the accuracy of any scientific claims that have been made by an authority nor can she validate (or otherwise) any such claims. While she is aware that Mr Craig has serious concerns in this respect, the Commissioner's locus extends only to determining whether SEPA complied with the EIRs when responding to Mr Craig's information request, and whether it identified all relevant recorded information that it held in doing so.
17. The Commissioner has considered all of SEPA's submissions regarding the processes followed in detecting and analysing particles found at Dalgety Bay and the information that has been published on its website. In this respect, the Commissioner has considered the explanation provided by SEPA showing the methodology employed by it in the monitoring and recovery of particles and the subsequent laboratory analysis that is undertaken. Notwithstanding Mr Craig's belief that the information is inaccurate, the Commissioner is satisfied that it does comprise information that SEPA considers meets the terms of the request insofar as it comprises information that SEPA considers shows evidence of radium in particles found at Dalgety Bay.
18. The Commissioner has also considered whether SEPA has identified all of the relevant information that it holds. In this respect, SEPA explained that, in response to the investigating officer's request for submissions, it had carried out a survey of all of the information that it held in relation to surveys and laboratory analysis concerning Dalgety Bay. The Commissioner has considered the relevant information identified by SEPA and the explanation provided by SEPA concerning the processes followed by it in identifying and analysing radioactive substances. Having done so, the Commissioner is satisfied that SEPA has located and provided specific links to the relevant information it holds.
19. The Commissioner is therefore satisfied that SEPA has complied with the terms of Mr Craig's request and, in doing so, complied with section 5(1) of the EIRs.



DECISION

In respect of the matters specified in Mr Craig's application for decision, the Commissioner finds that the Scottish Environmental Protection Agency complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Mr Craig.

Appeal

Should either Mr Craig or the Scottish Environmental Protection Agency 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.

Margaret Keyse
Head of Enforcement
20 November 2012



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

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- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- ...
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...



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.

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