

Decision Notice



Decision 013/2012 Mr Paul Hutcheon of the Sunday Herald and the Scottish Ministers

Failure to respond to requests and requirements for review

Reference No: 201102273, 201102275, 201102277 and 201102278
Decision Date: 24 January 2012

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Kevin Dunion

Scottish Information Commissioner

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Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to four separate information requests made by Mr Hutcheon.

Background

1. This decision concerns four separate information requests, which are detailed below.
2. On 9 August 2011, Mr Hutcheon emailed the Ministers requesting information regarding payments made to the firm Alexander Dennis and the Souter Charitable Trust; meetings between the Scottish Government and the Souter Charitable Trust or Brian Souter; meetings between the First Minister and Brian Souter and dates of occasions when Brian Souter had stayed overnight at Bute House.
3. Also on 9 August 2011, Mr Hutcheon emailed the Ministers requesting information about meetings and correspondence between Sir David Murray and the First Minister, and meetings between Sir David Murray and the Chief Planner.
4. On 20 September 2011, Mr Hutcheon emailed the Ministers requesting correspondence between the First Minister and Ignacio Galan (or their respective offices). He also requested all correspondence relating to the First Minister's trip to Bilbao and the Basque country, and accommodation on that trip.
5. On 29 September 2011, Mr Hutcheon emailed the Ministers requesting all files and correspondence on preparations for the meeting/breakfast between First Minister and Al Gore.
6. The Ministers did not respond to any of these requests and, on 31 October 2011, Mr Hutcheon sent four emails to the Ministers, requesting reviews of their handling of each request. Mr Hutcheon drew the Ministers' attention to the fact that they had not provided him with responses to his requests and in doing so had breached the timescales provided for in FOISA.
7. Mr Hutcheon did not receive any response to his requests for review and on 6 December 2011 wrote to the Commissioner in four separate emails, stating that he was dissatisfied with those failures and applying for a decision on each of the requests in terms of section 47(1) of FOISA.
8. The applications were validated by establishing that Mr Hutcheon had made requests for information to a Scottish public authority and had applied to the Commissioner for decisions only after asking the authority to review its failure to respond to those requests.



9. The four applications from Mr Hutcheon were conjoined for the purposes of investigation and this decision.

Investigation

10. On 9 December 2011, the Ministers were notified in writing that four applications had been received from Mr Hutcheon and were invited to comment on those applications.
11. The Ministers responded on 6 January 2012, explaining that there had been issues surrounding the monitoring, registering and allocating of information requests received into the First Minister's Office following the election in May 2011 and over the following period, due to the volume of correspondence and requests directed to that Office.
12. The Ministers further explained that, due to the unprecedented volume of requests directed to the First Minister's Office, there had been a number of incidences of requests being overlooked or mislaid and deadlines being exceeded.
13. The Ministers stated that, in order to ensure that greater attention was given to information requests, a new member of staff had joined the Office team to monitor, register and ensure due attention was given to timescales of information requests received. The Ministers hoped that this would result in fewer oversights with regard to requests in the future.
14. The Ministers stated that responses to Mr Hutcheon's requests were being prepared and it was hoped that they would be sent to Mr Hutcheon by the end of the following week.
15. On 19 January 2012, as no responses had been issued by the Ministers, the investigating officer advised the Ministers that if responses had still not been issued by 23 January 2012, a decision would be issued requiring the Ministers to respond to Mr Hutcheon.
16. So far as the Commissioner understands, the Ministers still had not provided Mr Hutcheon with responses to his requirements for review by the time of issuing this decision.

Commissioner's analysis and findings

17. Section 10(1) of FOISA 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.
18. Given that the Ministers have not responded to any of Mr Hutcheon's requests of 9 August 2011, 20 September 2011 or 29 September 2011, the Commissioner finds that the Ministers failed to respond to Mr Hutcheon's requests for information within the 20 working days allowed by section 10(1) of FOISA.

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19. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant in this case.
20. As no reviews have been carried out, the Commissioner concludes that the Ministers failed to deal with Mr Hutcheon's requirements for review within the 20 working days allowed by section 21(1) of FOISA.
21. The remainder of section 21 of FOISA sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Ministers failed to discharge these requirements and he now requires a review to be carried out in accordance with them (and in particular sections 21(4)(c) and (5)).
22. In their submissions, the Ministers indicated that they had taken steps to improve the arrangements for managing information requests. Whilst the Commissioner welcomes this commitment, he must also express a disappointment that in this case, none of Mr Hutcheon's four requests or requirements for review were processed within the applicable timescales, or in the period since those timescales passed.

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) in dealing with the four information requests made by Mr Hutcheon, in particular by failing to respond to Mr Hutcheon's requests for information and requirements for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires the Ministers to comply with Mr Hutcheon's requirements for review, in accordance with section 21 of FOISA, by 9 March 2012.

Appeal

Should either Mr Hutcheon or the Scottish Ministers 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.

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Claire Sigsworth
Deputy Head of Enforcement
24 January 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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

...

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.
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- (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 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.
 - (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.

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