

Decision Notice



Decision 024/2012 Mr Tom Gordon and the Scottish Ministers

Failure to comply with required timescales or carry out review

Reference No: 201200034

Decision Date: 6 February 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 an information request made by Mr Gordon.

Background

1. On 17 August 2011, Mr Gordon wrote to the Ministers requesting certain specified information.
2. Mr Gordon received no response to his request for information.
3. On 22 September 2011, Mr Gordon wrote to the Ministers requesting a review in respect of their failure to respond.
4. Mr Gordon did not receive a response to his requirement for review and, on 3 January 2012, wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Gordon 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 failure to respond to that request. The case was then allocated to an investigating officer.

Investigation

6. On 12 January 2012, the Ministers were notified in writing that an application had been received from Mr Gordon and were invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Ministers responded on 3 February 2012, acknowledging that they had failed in their duty under Part 1 of FOISA in that they had not provided Mr Gordon with a response to his request within the appropriate timeframe, or carried out a review. The Ministers explained 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.



8. 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.
9. 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.
10. The Ministers apologised for this oversight, but confirmed that a response was being prepared for Mr Gordon. As at the date of this Decision Notice, a response has not yet been provided.

Commissioner's analysis and findings

11. 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, subject to certain exceptions which are not relevant in this case.
12. Since the Ministers did not provide a response to Mr Gordon's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA
13. 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 review, again subject to exceptions which are not relevant to this case.
14. Since the Ministers did not provide a response to Mr Gordon's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA
15. The remainder of section 21 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)).



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 information request made by Mr Gordon, in particular by failing to respond to Mr Gordon's request for information and requirement 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 Gordon's requirement for review, in accordance with the requirements of section 21 of FOISA, by 22 March 2012.

Appeal

Should either Mr Gordon 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.

Margaret Keyse
Head of Enforcement
6 February 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.

...

- (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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