

Decision Notice



Decision 028/2013 Mr Paul Hutcheon and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201202639

Decision Date: 26 February 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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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 Hutcheon.

Background

1. On 18 September 2012, Mr Hutcheon wrote to the Ministers requesting certain specified information.
2. Mr Hutcheon received no response to his request for information.
3. On 29 October 2012, Mr Hutcheon wrote to the Ministers, requesting a review in respect of their failure to respond.
4. Mr Hutcheon did not receive a response to his requirement for review and, on 15 December 2012, wrote to the Commissioner's Office, 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 Hutcheon 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

6. On 22 January 2013, the Ministers were notified in writing that an application had been received from Mr Hutcheon and were invited to comment on the application.
7. The Ministers submitted that this request was received at a time when its Freedom of Information team was under a lot of pressure and that other work impacted upon the process of obtaining clearance for responding to the request. They submitted that the FOI team had taken on board a number of learning points since then, which should mean that other cases could be responded to more quickly.



8. At the time of writing this decision, however, no response had yet been issued by the Ministers to Mr Hutcheon's requirement for review.

Commissioner's analysis and findings

9. 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.
10. Since the Ministers did not provide a response to Mr Hutcheon's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
11. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
12. Since the Ministers did not provide a response to Mr Hutcheon's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
13. 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 now requires a review to be carried out in accordance with them.

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 Hutcheon, in particular by failing to respond to Mr Hutcheon'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 provide Mr Hutcheon with a response to his request for review, in accordance with the requirements of section 21 of FOISA, by 12 April 2013.

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Mr Paul Hutcheon
and the Scottish Ministers



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.

Euan McCulloch
Deputy Head of Enforcement
26 February 2013



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

...

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.

...