



Scottish Information  
Commissioner

**Decision 030/2007 Mr and Mrs Quinn and the Scottish  
Executive**

***Failure to carry out review***

**Applicant: Mr and Mrs Quinn  
Authority: The Scottish Executive  
Case No: 200601878  
Decision Date: 14 February 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
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## Decision 030/2007 Mr and Mrs Quinn and the Scottish Executive

*Information request made to the Scottish Executive - applicants were dissatisfied with the response and submitted a request for review - Scottish Executive failed to carry out a review within the timescales set down in FOISA.*

### Facts

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1. Mr and Mrs Quinn made an information request to the Scottish Executive (the Executive) on 1 September 2006. Mr and Mrs Quinn specifically requested copies of documents which indicated proof of a tenancy and a blank copy of the application form used to appoint a replacement arbiter in accordance with Schedule 2 to the Agricultural Holdings (Specification of Forms) (Scotland) Order 1991 (the 1991 Order).
2. The Executive responded to Mr and Mrs Quinn's request within the 20 working days allowed for a response under section 10(1) of FOISA.
3. In its response the Executive explained that it did not hold any information which proves the tenancy in question, although it did provide other information to Mr and Mrs Quinn on this subject.
4. With regard to Mr and Mrs Quinn's request for a blank copy of the application form used to appoint a replacement arbiter, the Executive explained that such forms may be used for applications for appointment, but they are not mandatory under the 1991 Order and that it does not require that such a form to be submitted. As such, the Executive explained that it did not hold blank copies of the forms in question. However, the Executive did provide Mr and Mrs Quinn with an internet link to the 1991 Order which details the information required to request the appointment of an arbiter under the 1991 Order.
5. Mr and Mrs Quinn were dissatisfied with this response and, on 3 October 2006, submitted a request for review.
6. On 27 November 2006, Mr and Mrs Quinn made an application to the Commissioner for a decision as the Executive had not carried out a review.
7. The case was subsequently allocated to an investigating officer. The application was validated by establishing that Mr and Mrs Quinn had made a valid information request to a Scottish public authority and had appealed to the Commissioner only after asking the authority to review its response to their request.



8. On 1 December 2006, the officer notified the Executive, in terms of section 49(3)(a) of FOISA, of the application made by Mr and Mrs Quinn and asked for its comments on the application.
9. The Executive responded on 7 December 2006.
10. In its submissions the Executive explained that it did not consider Mr and Mrs Quinn's letter of 3 October 2006 to be a valid request for review. The Executive acknowledged that its interpretation of this letter may seem to be overly restrictive but concluded that the stricter interpretation was more appropriate on this occasion.
11. In its submissions, the Executive set out its reasoning for this stricter interpretation. On the basis of the explanations provided, the investigating officer contacted the Executive and invited its comments on the application of section 21(8) of FOISA. Section 21(8) provides that a Scottish public authority is not obliged to comply with a requirement for review if the requirement is vexatious or where the requirement for review relates to an initial request which is deemed vexatious under section 14 of FOISA.
12. The Executive responded to this Office on 27 January 2007 stating that it did not see sufficient grounds for considering a review request to be vexatious in terms of section 21(8)(a). Furthermore, having responded to their initial request, the Executive did not think it could reasonably apply section 21(8)(b) now. In addition, it did not consider there to be sufficient grounds for treating their initial request as vexatious.
13. Having considered the content of Mr and Mrs Quinn's letter of 3 October 2006, the Commissioner notes the reference the Executive has made to the last sentence of paragraph 2 of Mr and Mrs Quinn's letter, which specifically states that the Executive is "... not required to review this obvious error by Rhona Brankin as we have given her another chance to answer us correctly without delay". This statement is made in relation to their request for a blank copy of the application form to appoint a replacement arbiter. The Commissioner is therefore satisfied that Mr and Mrs Quinn have not requested a review in relation to this aspect of their request.
14. However, Mr and Mrs Quinn do specifically request that the Executive review its statement to the effect that it does not hold information relating to the proof of tenancy.
15. The Commissioner is satisfied that Mr and Mrs Quinn's letter of 3 October 2006 is a valid request for review in terms of section 20(3) of FOISA in relation their request for documents proving tenancy.



16. Section 21(1) of FOISA requires authorities to respond to the requests for review they receive within 20 working days of receipt. In failing to do so, the Executive failed to comply with section 21(1) of FOISA in dealing with Mr and Mrs Quinn's request for review.

## **Decision**

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The Commissioner finds that the Scottish Executive (the Executive) failed to deal with Mr and Mrs Quinn's request for information in accordance with Part 1 of FOISA, in that it failed to comply with section 21(1) in dealing with their request.

The Commissioner requires the Executive to respond to Mr and Mrs Quinn's request for review by undertaking a review which addresses the dissatisfaction raised in their letter dated 3 October 2006 but only in relation to the Executive's statement that it does not hold information proving tenancy.

The Commissioner requires the Executive to respond to Mr and Mrs Quinn within 45 days of receipt of this notice.

## **Appeal**

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Should either Mr and Mrs Quinn or the Executive wish to appeal 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 of receipt of this notice.

**Margaret Keyse**  
**Head of Investigations**  
**14 February 2007**