

Decision Notice

Decision 030/2017: Mr Harald Tobermann and the Scottish Ministers

European Globalisation Adjustment Fund: failure to respond within statutory timescales

Reference No: 201700158

Decision Date: 08 March 2017



Scottish Information
Commissioner

Summary

The Scottish Ministers (the Ministers) were asked for a list of applications made with the assistance of the Scottish Government to the European Globalisation Adjustment Fund. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Ministers failed to comply with the subsequent requirement for review within the timescale set down by FOISA.

Background

Date	Action
22 October 2016	Mr Tobermann made an information request to the Ministers.
	The Ministers did not respond to the information request.
27 November 2016	Mr Tobermann wrote to the Ministers, requiring a review of their failure to respond.
	Mr Tobermann did not receive a response to his requirement for review.
23 January 2017	Mr Tobermann wrote to the Commissioner's Office, stating that he was dissatisfied with the Minister's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 February 2017	The Ministers were notified in writing that an application had been received from Mr Tobermann and were invited to comment on the application.
28 February 2017	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. The Ministers confirmed that they had received Mr Tobermann's request and requirement for review, but explained they had not been identified until the Commissioner's office had made contact.
2. The Ministers explained the emails had initially been forwarded to the Director General of Economy's mailbox, but then forwarded to a "not used" deleted mailbox rather than the "currently used" one. They confirmed steps had been taken to ensure the unused mailbox was no longer available, to avoid a similar situation happening again.
3. The Ministers accepted that they had failed to respond as required by FOISA and confirmed that a response (including an apology for the earlier failure) was issued to Mr Tobermann on 27 February 2017. A copy was provided to the Commissioner.
4. 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. This is subject to qualifications which are not relevant in this case.

5. It is a matter of fact that the Ministers did not provide a response to Mr Tobermann's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
6. 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. Again, this is subject to qualifications which are not relevant in this case.
7. It is a matter of fact that the Ministers did not provide a response to Mr Tobermann's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
8. As the Ministers responded to Mr Tobermann's requirement for review on 27 February 2017, the Commissioner does not require them to take any further action in relation to Mr Tobermann's application.
9. The Commissioner notes that the Ministers have apologised to Mr Tobermann for their failure to comply.

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 responding to the information request made by Mr Tobermann. In particular, the Ministers failed to respond to Mr Tobermann's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr Tobermann's application, given that a response has now been issued.

Appeal

Should either Mr Tobermann or the Scottish Ministers wish to appeal against this decision, they have the right to 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.

Euan McCulloch
Deputy Head of Enforcement

08 March 2017

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