

Decision Notice

Decision 055/2017: Mr Stewart Black and Audit Scotland

Definition of specific terms in ISA 250: failure to respond within statutory timescales

Reference No: 201602217

Decision Date: 19 April 2017



Scottish Information
Commissioner

Summary

Audit Scotland was asked for a copy of ISA (International Standard on Auditing (UK and Ireland)) 250. Audit Scotland was also asked to specify the page or paragraph within ISA 250 which defined the words “lawful” and “appropriate”. The decision finds that Audit Scotland failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
28 July 2016	Mr Black made an information request to Audit Scotland.
4 August 2016	Audit Scotland responded to the information request, with a copy of ISA 250.
9 August 2016	Mr Black wrote to Audit Scotland, requiring a review of its failure to respond to that part of his request relating to the definitions of “lawful” and “appropriate”.
15 September 2016	Mr Black received a response to his requirement for review.
1 December 2016	Mr Black wrote to the Commissioner’s Office, stating that he was dissatisfied with Audit Scotland’s failure to respond to his requirement for review within 20 working days and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
29 March 2017	Audit Scotland was notified in writing that an application had been received from Mr Black and was invited to comment on the application.
3 April 2017	The Commissioner received submissions from Audit Scotland. These submissions are considered below.

Commissioner’s analysis and findings

1. Audit Scotland submitted that there had not been a breach of FOISA in its handling of Mr Black’s correspondence.
2. Audit Scotland explained that there had been a considerable volume of correspondence with Mr Black relating to its audit processes. In response to a previous information request (submitted on 11 May 2016), Audit Scotland had informed Mr Black that it held no recorded information defining the terms “lawful” and “appropriate”.

3. Audit Scotland argued that its response of 15 September 2016 was addressing issues supplementary to the previous request of 11 May 2016. In Audit Scotland's view, it had dealt with these issues through correspondence. Additionally, it had informed Mr Black (on 12 October 2016) that it did not consider his correspondence of 28 July 2016 and 9 August 2016 to be FOI requests.
4. The Commissioner has considered Audit Scotland's submissions and the terms of Mr Black's correspondence of 28 July 2016 and 9 August 2016.
5. In the Commissioner's view, Mr Black's email of 28 July 2016 (where he sought a copy of ISA 250 and asked for the page or paragraph where specific terms were defined) was a valid, and distinct, request for information under FOISA.
6. On 9 August 2016, Mr Black pointed out to Audit Scotland that that it had not responded to that part of the request where he asked for a page or paragraph reference to be provided. In the Commissioner's view, Mr Black was expressing dissatisfaction with the response provided by Audit Scotland. As such, this communication ought to have been handled as a requirement for review in terms of section 21 of FOISA.
7. 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. This is subject to qualifications which are not relevant in this case.
8. The Commissioner finds that Audit Scotland did not provide a response to Mr Black's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

Decision

The Commissioner finds that Audit Scotland failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Black. In particular, Audit Scotland failed to respond to Mr Black's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require Audit Scotland to take any action in respect of this failure in response to Mr Black's application, given that a response was issued on 15 September 2016.

Appeal

Should either Mr Black or Audit Scotland 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.

Margaret Keyse
Head of Enforcement

19 April 2017

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