

Decision Notice



Decision 073/2009 Ms Polly Jones and the Scottish Ministers

Failure to respond to request and request for review

Reference No: 200900932
Decision Date: 25 June 2009

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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 Ms Jones.

Background

1. On 1 December 2008, Ms Jones sent an email to the Ministers requesting the following information: “all information relating to the attendance of Cabinet members at corporate events, in Scotland and abroad, including full costs (e.g. travel arrangements, accommodation) over the last year and planned for the future.
2. A response was provided by the Ministers on 12 December 2008. Within this response the Ministers explained that they did not hold the requested information in a format which would allow them to easily search for it. The Ministers applied section 12 of FOISA, on the basis that the cost of providing the information would exceed the prescribed limit of £600. The Ministers did invite Ms Jones to narrow the scope of her request in order to being the costs under the £600 limit.
3. Ms Jones submitted a new request, seeking a narrower range of information from the Ministers on 16 January 2009. In particular she requested, information relating to ministerial attendance at corporate events abroad, in the last year, including costs. It is this request that is the subject of this decision.
4. The Ministers sought clarification on this narrowed down request in terms of section 1(3) of FOISA on 26 January 2009, and Ms Jones responded to this request on 30 January 2009.
5. No response to the request of 16 January 2009 was supplied following the exchanges above. On 31 March 2009, Ms Jones wrote to the Ministers requesting a review of their failure to respond to her request of 16 January 2009.
6. No response was provided by the Ministers to this requirement for review.
7. Ms Jones did not receive a response to her request or request for review and on 15 May 2009 wrote to the Commissioner, stating that she was dissatisfied with that failure and applying for a decision in terms of section 47(1) of FOISA.



8. The application was validated by establishing that Ms Jones 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

9. On 2 June 2009, the Ministers were notified in writing that an application had been received from Ms Jones and invited to comment on the application, as required by section 49(3)(a) of FOISA.
10. The Ministers responded on 12 June 2009 confirming that they had received Ms Jones request of 16 January 2009. The Ministers advised that the request was handled by the Private Office Management Team, and following clarification, was taken forward by the official normally responsible for handling FOI requests.
11. The Ministers acknowledged that Ms Jones contacted them on various occasions for an update, but that none was provided. They stated that, having searched electronic records regarding Ms Jones request, it was clear that she received no substantive response to either her initial request or her review request.
12. The Ministers acknowledged that their handling of the request was well below acceptable standards, and they apologised for this. They stated that a response will be provided to Ms Jones as quickly as possible, and this was subsequently issued on 19 June 2009.

Commissioner's analysis and findings

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
14. The Ministers have acknowledged that they received Ms Jones' request of 16 January 2009 and that they did not provide any substantive response to this.
15. The Commissioner therefore finds that the Ministers failed to respond to Ms Jones' request for information of 16 January 2009, within the 20 working days allowed under section 10(1) of FOISA.
16. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.



17. The Ministers have also acknowledged that no response was made to Ms Jones' requirement for review.
18. The Commissioner therefore finds that the Ministers failed to respond to Ms Jones' requirement for review, within the 20 working days allowed under section 21(1) of FOISA.
19. The Commissioner notes that a response was provided to Ms Jones' information request on 19 June 2009. In the circumstances, he does not require any action to be taken in relation to these breaches in response to this decision.

DECISION

The Commissioner finds that the Scottish Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Ms Jones, in particular by failing to respond to Ms Jones request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

As a response has now been provided to Ms Jones, the Commissioner does not require the Scottish Ministers to take any action in relation to these breaches in response to this decision.

Appeal

Should either Ms Jones 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.

Claire Sigsworth
Deputy Head of Enforcement
25 June 2009



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.

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- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

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
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.

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.

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