

Decision Notice



Decision 076/2013 Mr Tom Gordon and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201300637
Decision Date: 25 April 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

This decision considers whether the Scottish Ministers complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Gordon on 20 November 2012.

Background

1. Mr Gordon made an email information request to the Ministers for information pertaining to the Govanhill Baths Community Trust on 20 November 2012.
2. The Ministers did not respond to his request for information.
3. On 8 January 2013, Mr Gordon emailed the Ministers requesting a review in respect of their failure to respond to his request.
4. Mr Gordon did not receive a response to his requirement for review. On 4 March 2013, he wrote to the Commissioner, stating that he was dissatisfied with this 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 Gordon made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

6. On 15 March 2013, the Ministers were notified in writing that an application had been received from Mr Gordon and were invited to comment on the application.
7. The Ministers indicated their intention to provide a response to Mr Gordon, but at the time of writing this decision no such response had been issued.



Commissioner's analysis and findings

8. 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.
9. Since the Ministers did not provide a response to Mr Gordon's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
10. 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.
11. Since the Ministers did not provide a response to Mr Gordon's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
12. 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 this requirement and she now requires a review to be carried out in accordance with section 21 of FOISA.

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 Gordon, in particular by failing to respond to Mr Gordon'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 respond to Mr Gordon's requirement for review, in accordance with the requirements of section 21 of FOISA, by 6 June 2013.



Appeal

Should either Mr Gordon 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
25 April 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.

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