

Decision Notice

Decision 087/2018: Mr F and the Scottish Ministers

Sent emails containing “FOI”: failure to respond within statutory timescales

Reference No: 201800733

Decision Date: 20 June 2018



Scottish Information
Commissioner

Summary

The Scottish Ministers (the Ministers) were asked for emails held in the Deputy First Minister's sent items folder which contained the term "FOI", covering the three month period ending 31 January 2018. 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 requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the Ministers to comply with the requirement for review.

Background

Date	Action
9 February 2018	Mr F made an information request to the Ministers.
	The Ministers did not respond to the information request.
21 March 2018	Mr F wrote to the Ministers, requiring a review in respect of their failure to respond.
19 April 2018	The Ministers wrote to Mr F, acknowledging that their response to his requirement for review was due that day. They informed Mr F that, due to the large volume of documents to collate and redact, it was taking longer than expected to carry out the review. The Ministers apologised for the delay.
26 April 2018	Mr F wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failures to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
24 May 2018	The Ministers were notified in writing that an application had been received from Mr F and were invited to comment on the application.
7 June 2018	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. 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.
2. The Ministers confirmed to the Commissioner that they had not provided a response to Mr F's request. They apologised for this failure, explaining that the request had been missed during a period of exceptional pressures during the adverse weather in February 2018.

3. It is a matter of fact that the Ministers did not provide a response to Mr F's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
4. 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.
5. The Ministers confirmed to the Commissioner that they had not provided a response to Mr F's request for review and apologised for this failure.
6. The Ministers explained that Mr F's request for review had alerted staff to the fact that the initial request had been missed and work began to prepare a response. They explained that the review response had been delayed due to the complexity of the information held, including any redaction required, and that Mr F had been updated to this effect. The Ministers informed the Commissioner that every effort was being made to ensure the review response was issued in early course.
7. It is a matter of fact that the Ministers did not provide a response to Mr F's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
8. 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 these requirements: he now requires a review to be carried out in accordance with section 21.
9. The Commissioner notes that the Ministers have apologised to Mr F and have explained the reasons for the delay in responding to his request for review. He would comment, however, that there is no provision in FOISA to extend the period for responding to an information request or a requirement for review, and public authorities must take steps to ensure that all of these are responded to within the statutory timescale of 20 working days.

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

The Commissioner therefore requires the Ministers to provide a response to Mr F's requirement for review by **7 August 2018**.

Appeal

Should either Mr F 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.

Enforcement

If the Scottish Ministers fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Scottish Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Scottish Ministers as if they had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

20 June 2018

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info