

# Decision Notice



Decision 126/2011 Mr Eddie Cairns and the Scottish Ministers

Compliance with timescales

Reference No: 201100938  
Decision Date: 27 June 2011

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**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## 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 Mr Cairns.

## Background

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1. On 11 March 2011, Mr Cairns wrote to the Ministers requesting information on procedures for addressing failures by the Lord Advocate.
2. On 11 April 2011, having received no response to his request, Mr Cairns wrote to the Ministers requesting a review of their failure to reach a decision on the request.
3. Mr Cairns did not receive a response to his requirement for review and on 13 May 2011 wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to reach a decision and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Mr Cairns 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

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5. On 26 May 2011, the Ministers were notified in writing that an application had been received from Mr Cairns and were invited to comment on the application.
6. The Ministers responded on 16 June 2011, explaining that Mr Cairns' letters of 11 March and 11 April 2011 had not been recognised as (respectively) a request for information and a requirement for review. The Ministers apologised for this oversight but confirmed that a review had been carried out and a response provided to Mr Cairns on 8 June 2011.



## Commissioner's analysis and findings

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7. 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.
8. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant to this case.
9. While noting the Ministers' comments in this case, the Commissioner has no option but to find that they failed to deal with Mr Cairns' request for information within the 20 working days required by section 10(1) of FOISA, or with his requirement for review within the 20 working days required by section 21(1) of FOISA.
10. Given that the Ministers have now provided a response to Mr Cairns' requirement for review, the Commissioner does not require the Ministers to take any further action in this case.

## 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 Cairns, in particular by failing to respond to Mr Cairns' request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr Cairns' requirement for review, the Commissioner does not require the Ministers to take any action in respect of these failures in response to Mr Cairns' application.

Decision 126/2011  
Mr Eddie Cairns  
and the Scottish Ministers



## Appeal

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Should either Mr Cairns 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**  
**27 June 2011**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 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.

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