

Decision Notice

Decision 148/2016: Mr Tom Gordon and the Scottish Ministers

Potential creation of Scottish Monetary Authority:

Failure to respond within statutory timescales

Reference No: 201600948

Decision Date: 05 July 2016



Scottish Information
Commissioner

Summary

On 3 February 2016, Mr Gordon asked the Scottish Ministers (the Ministers) for information about the potential creation of a Scottish Monetary Authority. 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 Mr Gordon's requirement for review within the timescale set down by FOISA.

Background

Date	Action
3 February 2016	Mr Gordon made an information request to the Ministers.
	The Ministers did not respond to the information request.
8 March 2016	Mr Gordon wrote to the Ministers, requiring a review in respect of their failure to respond.
9 March 2016	Although Mr Gordon received an acknowledgement, he did not receive a response to his requirement for review.
6 and 8 April 2016	The Ministers sent Mr Gordon further holding emails but did not provide a response to his requirement for review.
18 May 2016	Mr Gordon wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14 June 2016	The Ministers were notified in writing that an application had been received from Mr Gordon and were invited to comment on the application.
22 June 2016	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. The Ministers notified the Commissioner that a response was issued to Mr Gordon on 17 June 2016. A copy was provided to the Commissioner.
2. 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.
3. It is a matter of fact that the Ministers did not provide a response to Mr Gordon'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. It is a matter of fact that the Ministers did not provide a response to Mr Gordon's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
6. As the Ministers responded to Mr Gordon's requirement for review on 17 June 2016, the Commissioner does not require them to take any further action in relation to Mr Gordon's application.
7. The Commissioner also notes that the Ministers apologised in their review outcome for their failure to comply.

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

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr Gordon's application, given that a response has now been issued.

Appeal

Should either Mr Gordon 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.

Euan McCulloch
Deputy Head of Enforcement

05 July 2016

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