

Decision Notice

Decision 193/2014: Mr John McLean and Scottish Parliamentary Corporate Body

Handling of correspondence: failure to respond within statutory timescales

Reference No: 201401168

Decision Date: 11 September 2014



Scottish Information
Commissioner

Summary

On 2 February and 17 March 2014, Mr McLean asked the Scottish Parliamentary Corporate Body (the SPCB) for information about handling of his correspondence. This decision finds that the SPCB failed to comply with Mr McLean's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

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

Background

Date	Action
2 February 2014 and 17 March 2014	Mr McLean made information requests to the SPCB.
27 February 2014 and 10 April 2014	The SPCB responded to the information requests.
13 April 2014	Mr McLean wrote to the SPCB requiring a review of its decision.
	Mr McLean did not receive a response to his requirement for review.
16 June 2014	Mr McLean wrote to the Commissioner's Office, stating that he was dissatisfied with the SPCB's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15 July 2014	The SPCB was notified in writing that an application had been received from Mr McLean and was invited to comment on the application.
24 July 2014	The Commissioner received submissions from the SPCB. These submissions are considered below.

Commissioner's analysis and findings

1. In its submissions, the SPCB argued that it had considered an email of 17 March 2014 as a valid request for review and had responded to it accordingly.
2. Section 20(3) of FOISA sets out the requirements of a valid request for review. It must:
 - Be in writing or in another form which is capable of being used for subsequent reference
 - State the name of the requester and an address for correspondence; and

- Specify the request for information to which the requirement for review relates, and the matter which gives rise to the requester's dissatisfaction with the way in which the authority has dealt with that request.
3. Although Mr McLean's correspondence of 17 March 2014 states that he is seeking a review, it does not specify why he is dissatisfied with the way in which the SPCB dealt with his request for information: rather, he queries the unrelated content of the covering letter to the response. This correspondence provides no basis for the authority to undertake a review, so it is not a valid request for review in terms of section 20(3)(c)(ii).
 4. Mr McLean submitted a valid request for review, meeting these requirements, on 13 April 2014. This set out in detail why he is dissatisfied with the SPCB's initial response.
 5. 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. This is subject to qualifications which are not relevant in this case.
 6. It is a matter of fact that the SPCB did not provide a response to Mr McLean's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
 7. 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 SPCB failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

Decision

The Commissioner finds that the SPCB failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McLean. In particular, the SPCB failed to respond to Mr McLean's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires the SPCB to undertake a review and notify Mr McLean of the outcome by 27 October 2014.

Appeal

Should either Mr McLean or the Scottish Parliamentary Corporate Body 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 Parliamentary Corporate Body (the SPCB) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SPCB has failed to comply. The Court has the right to inquire into the matter and may deal with the SPCB as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

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