

Decision Notice



Decision 207/2012 Mr Tom Gordon and the Scottish Ministers

Cabinet agendas

Reference No: 201202044

Decision Date: 12 December 2012

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Scottish Information Commissioner

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Summary

Mr Tom Gordon submitted a request to the Scottish Ministers (the Ministers) for “all items of information contained in all agendas for all meetings of the Scottish cabinet since 2007”. The Ministers advised Mr Gordon that they did not consider his request to be valid under FOISA.

Following an investigation, during which the Ministers accepted that the request was valid, the Commissioner found that the Ministers had failed to deal with Mr Gordon’s request for information in accordance with Part 1 of FOISA, by incorrectly concluding that the request was invalid. She required the Ministers to respond to Mr Gordon’s requirement for review.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1)(c) (Requesting information); 21 (Review by Scottish public authority).

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 7 August 2012, Mr Gordon wrote to the Ministers, requesting:
“... all items of information contained in all agendas for all meetings of the Scottish cabinet since 2007.
Please note, this is not a request for cabinet papers or cabinet minutes, simply cabinet agendas.”
2. The Ministers responded on 3 September 2012 and informed Mr Gordon that having considered the Court of Session ruling in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73*¹, they considered the request to be invalid as it did not (in terms of section 8(1)(c) of FOISA) describe the information requested.

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



3. On 11 September 2012, Mr Gordon wrote to the Ministers requesting a review of their decision. He considered he had adequately described the information he was requesting.
4. The Ministers notified Mr Gordon of the outcome of their review on 9 October 2012. The Ministers upheld their original decision that the request was not considered valid in terms of section 8(1)(c) of FOISA.
5. On 9 October 2012, Mr Gordon wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

Investigation

6. On 15 October 2012, the Ministers were notified in writing that an application had been received from Mr Gordon and were asked to provide the Commissioner with any submissions they may have as to why Mr Gordon's request for information should not be considered valid in terms of section 8 of FOISA.
7. The Ministers responded on 6 November 2012, restating their view that they did not consider Mr Gordon's request for information to be valid. The case was then allocated to an investigating officer.
8. The investigating officer contacted the Ministers on 13 November 2012, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their view that the request was invalid.
9. The Ministers responded on 4 December 2012. They informed the Commissioner that they did not wish to continue to assert that the request was invalid. The Ministers confirmed that a revised review response would be prepared and provided to Mr Gordon. No timeframe for this was provided by the Ministers.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Gordon and the Ministers and is satisfied that no matter of relevance has been overlooked.



11. The Commissioner notes that in the course of the investigation, the Ministers accepted that Mr Gordon's request for information was a valid one. Taking account of her own guidance on the validity of requests², issued in the light of the Court of Session decision referred to above, she considers this to have been the correct approach. She is satisfied that the request described the information Mr Gordon was seeking adequately, as required by section 8(1)(c) of FOISA.
12. Consequently, the Commissioner is satisfied that the request was a valid one for the purposes of section 1(1) of FOISA, to which the Ministers were therefore obliged to respond in terms of Part 1 of FOISA.
13. While the Commissioner notes the Ministers' intention to provide a response to Mr Gordon's requirement for review, she has been given no timeframe for the provision of such a response. The Commissioner therefore requires the Ministers to respond to Mr Gordon's requirement for review, in accordance with section 21 of FOISA and on the basis that the request is a valid one, by 26 January 2013.

DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Gordon, by wrongly finding that the request failed to meet the requirements of section 8(1)(c) of FOISA.

The Commissioner therefore requires the Ministers to comply with Mr Gordon's requirement for review, in accordance with the requirements of section 21 of FOISA and on the basis that his information request is a valid one, by 26 January 2013.

² <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



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
12 December 2012



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.

...

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...

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.

- (2) If-

- (a) the authority is the Keeper of the Records of Scotland; and
(b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,

subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.

- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on 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.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (7) Regulations under subsection (6) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.