



Scottish Information
Commissioner

**Decision 214/2007 – Mr Tom Gordon of The Sunday Times and
the Scottish Ministers**

***Four requests for correspondence between the First Minister
and others***

Applicant: Mr Tom Gordon, Sunday Times

Authority: Scottish Ministers

Case No: 200701359, 200701361, 200701363, 200701364

Decision Date: 12 November 2007

**Kevin Dunion
Scottish Information Commissioner**

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Failure of the Scottish Ministers to respond to four requests for information and four requests for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002 (FOISA).

Facts

1. On 22 February 2007, Mr Tom Gordon sent four email requests to the Scottish Executive, now the Scottish Government, asking for copies of correspondence between the then First Minister, Jack McConnell, and four former special advisers or their respective offices, after the persons named had ceased to act as special advisers.
2. No response was received within the statutory time period of 20 working days. On 16 April 2007 Mr Gordon sent another four emails in which he advised that he was interpreting the failure to reply to be a refusal to supply the information he had requested, and asked the Scottish Ministers to review that decision.
3. No reply was received to any of Mr Gordon's requests for a review and on 4 September 2007 he wrote again to the Scottish Government, highlighting the failure to respond to the four requests considered in this Decision Notice, along with an additional 34 requests made in March 2007.
4. On 5 September 2007 Mr Gordon received a short email from the Scottish Government, which apologised for the delay and advised him that he should receive replies to a number of his requests within the next couple of days, with more replies to follow.
5. On 15 October 2007 Mr Gordon made four applications to the Scottish Information Commissioner (the Commissioner), in each case stating that no reply had been received to the request in question and advising that he wished to exercise his right of appeal to the Commissioner.
6. The Commissioner notified the Scottish Ministers of the applications made by Mr Gordon and invited their comments (in terms of section 49(3)(a) of FOISA) on 19 October 2007. A response was received from the Scottish Ministers on 2 November 2007.



7. In their response, the Scottish Ministers accepted that they had not responded to Mr Gordon's requests for information in line with section 10(1) of FOISA as they should have done. They explained that the four requests in question were part of a batch of 49 requests which Mr Gordon made on 22 and 23 February. Failure to respond within the statutory timescale was due to the unprecedented volume of FOI requests received in the run-up to the election, compounded by additional pressure of work during the transition to the new administration.
8. The Scottish Ministers advised that they had taken steps to ensure that FOI requests to all Ministers' offices are managed better, and that the four remaining requests would all be answered that day.
9. Under section 49(1) of FOISA, except where an application is frivolous or vexatious, or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a decision notice to both the applicant and the public authority.
10. The Commissioner is satisfied that Mr Gordon made four separate requests for information to the Scottish Ministers on 22 February 2007, each of which were valid in terms of section 1(1) of FOISA, and that these requests were each followed by a valid requirement for review (in terms of section 20 of FOISA) on 16 April 2007.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information. The Scottish Ministers failed to respond to Mr Gordon's request for information within that period.
12. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review. The Scottish Ministers failed to respond to Mr Gordon's request for review within that period.
13. The Commissioner notes the explanation provided by the Scottish Ministers, and that replies were sent out to Mr Gordon on 2 November 2007.
14. Because the Scottish Ministers have taken steps to improve compliance with FOISA and because the Scottish Ministers have now replied to Mr Gordon's requests, the Commissioner does not require the Scottish Ministers to take further action on this occasion.



Decision

The Commissioner finds that the Scottish Ministers did not deal with Mr Gordon's requests for information in accordance with the following requirements of Part 1 of FOISA:

- Section 10(1), which states that a Scottish public authority must comply promptly with a request for information and in any event by not later than the twentieth working day after the receipt by the authority of the request and
- Section 21(1), which states that a Scottish public authority must comply promptly with a request for review and in any event by not later than the twentieth working day after the receipt by the authority of the request for review.

As the Scottish Ministers have taken steps to improve their compliance with FOISA and have responded to Mr Gordon's information requests, the Commissioner does not require the Scottish Ministers to take any further action on this occasion.

Appeal

Should either party wish to appeal this decision, there is an appeal to the Court of Session on a point of law only. Any appeal must be made within 42 days after the date of intimation of this notice.

Claire Sigsworth
Deputy Head of Investigations
12 November 2007