

# Decision Notice



Decision 246/2013 Mr Andrew Whitaker and the Scottish Ministers

Failure to respond to requirement for review

Reference No: 201302334

Decision Date: 1 November 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## 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 Whitaker.

## Background

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1. On 3 April 2013, Mr Whitaker wrote to the Ministers requesting certain specified information.
2. The Ministers responded on 6 August 2013.
3. On 28 August 2013, Mr Whitaker emailed the Ministers requesting a review of their decision.
4. Mr Whitaker did not receive a response to his requirement for review and, on 7 October 2013, wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Whitaker 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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6. On 15 October 2013, the Ministers were notified in writing that an application had been received from Mr Whitaker were invited to comment on the application.
7. The Ministers responded on 29 October 2013.

## Commissioner's analysis and findings

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8. The Ministers explained that, due to staff leave and other work pressures, it had taken longer than anticipated to carry out a review in this case.



9. 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, subject to certain exceptions which are not relevant in this case.
10. Since the Ministers did not provide a response to Mr Whitaker's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
11. 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 Ministers failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

## 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 Whitaker, in particular by failing to respond to Mr Whitaker's requirement for review within the timescale laid down by section 21(1) of FOISA and otherwise in accordance with section 21.

The Commissioner therefore requires the Ministers to undertake a review in respect of Mr Whitaker's request for information, in accordance with section 21 of FOISA, within 45 calendar days after the date of intimation of this decision notice, that is by **16 December 2013**.

## Appeal

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Should either Mr Whitaker 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.

**Alison Davies**  
**Deputy Head of Enforcement**  
**1 November 2013**



## Appendix

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### Relevant statutory provisions

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

##### 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.