

Decision 058/2006 Ms Sandra Uttley and the Scottish Executive

**Applicant: Ms Sandra Uttley
Authority: Scottish Executive
Case No: 200600476
Decision Date: 30 March 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

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No response to request or request for review

Facts

1. On 19 December 2005, Ms Uttley made an information request to the Scottish Executive (the Executive) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). Ms Uttley requested information in respect of the investigations made by the First Minister into her concerns about the Dunblane Inquiry.
2. The Executive did not respond to Ms Uttley's information request.
3. Ms Uttley then wrote to the Executive on 27 January 2006 requesting that it review its decision, as she had had no response to her initial application. Again, she did not receive a response from the Executive.
4. On 3 March 2006, Ms Uttley applied to the Scottish Information Commissioner, requesting that he investigate the Executive's refusal to respond to her request for information and to her subsequent request for review.
5. The Commissioner notified the Executive of the application made by Ms Uttley and invited its comments on 6 March 2006. The Executive responded by letter of 20 March 2006, stating that it had received 5 information requests from the applicant on 19 December 2005 (including the request that is the subject of this decision), all of which related to the Dunblane Inquiry. The requests had been titled 'Freedom of Information Request - Dunblane'.
6. The Executive stated that it had passed these requests to the Crown Office since, in this instance, the Crown Office was the most appropriate Division within the Executive to deal with them. The Crown Office decided that, given the actual terms of the request, it was not appropriate for it to respond to this request and accordingly on 11 January 2006 carried out a 'return transfer of Ministerial Correspondence' to the Ministerial Correspondence Unit. The Executive stated that at this point there was not a transfer of the original papers (Ms Uttley's request) with the *pro forma* transfer form, as is required. Consequently the transfer was not actioned and there was no response to Ms Uttley.

7. The letter of review was received, the Executive stated, by the Law Officer's Private Office and copied to the First Minister. This was not recognised as a request for review as such, but was seen to be part of a number of related requests by Ms Uttley that were being dealt with by the Crown Office and consequently it was not dealt with within the appropriate timescale.

The Commissioner's Findings and Analysis

8. Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, I must consider whether a 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.
9. I am satisfied that Ms Uttley made a request for information to the Executive on 19 December 2006 which was valid under section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 27 January 2006.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the receipt of the request to comply with the request for information.
11. Additionally, 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.
12. The Executive did not respond to either Ms Uttley's request for information or to her requirement for review within the respective timescales specified in FOISA.

Decision

The Commissioner finds that the Executive did not deal with Ms Uttley's request for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with section 10(1) and section 21(1).

The Commissioner requires the Executive to respond to Ms Uttley's request for information, by either providing the information requested or giving notice in terms of section 16 (refusal of request) or section 17 (notice that information is not held) of FOISA (as appropriate), within 42 days of receipt of this Decision Notice.

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 such appeal must be made within 42 days of receipt of this notice.

Margaret Keyse
Head of Investigations
30 March 2006