

Decision Notice



Decision 045/2012 Mr Rami Okasha and the Scottish Ministers

Failure to comply with required timescales or carry out reviews

Reference No: 201102280

Decision Date: 9 March 2012

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Margaret Keyse

Acting Scottish Information

Commissioner

Kinburn Castle

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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 information requests made by Mr Okasha.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 11 August 2011, Mr Okasha wrote to the Ministers requesting certain information about Mr Brian Souter. Amongst those requests were two communications which requested information and were entitled ‘Correspondence with and about Mr Souter’ and ‘Bute House and Mr Souter’s residence’.
2. On 6 October 2011, having received no response to his requests other than an acknowledgement, Mr Okasha wrote to the Ministers requesting a review of their failure to reach a decision on his requests.
3. Mr Okasha did not receive a response to his requests for review and, on 6 December 2011, wrote to the Commissioner’s office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Mr Okasha had made requests 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 those requests. The case was then allocated to an investigating officer.



Investigation

5. On 15 December 2011, the Ministers were notified in writing that an application had been received from Mr Okasha and were invited to comment on the application as required by section 49(3)(a) of FOISA.
6. This application related only to the requests described in paragraph 1 above and not to other requests made by Mr Okasha on the same date and on the same subject matter. These are at present the subject of a separate application to the Commissioner (reference 201101969).
7. In respect of Mr Okasha's request ('Correspondence with and about Mr Souter'), the Ministers responded to Mr Okasha on 10 January 2012.
8. In respect of Mr Okasha's request ('Bute House and Mr Souter's residence'), the Ministers responded to Mr Okasha on 7 February 2012.

Commissioner's analysis and findings

9. The Ministers apologised for the delay in responding to Mr Okasha and acknowledged that it was unfortunate that the two requests were overlooked. The Ministers explained that these two requests were forwarded to the First Ministers' Office for response, while the others made by Mr Okasha on the same day were forwarded to the Honours secretariat. Due to the unprecedented volume of information requests directed at the First Minister's Office, there had been a number of incidences of requests being overlooked or mislaid and deadlines exceeded.
10. They stated that they were aware that there had been a resource issue in the First Minister's Office, which has resulted in acknowledged failures to adhere to the designated timescales. In order to ensure that greater attention is given to information requests, a new staff member joined the First Minister's Office team on 24 November 2011 to monitor, register and ensure due attention is given to timescales of requests received. The Ministers commented that they hoped that this will result in fewer oversights with regard to requests in the future.
11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
12. Given that the Ministers did not respond to Mr Okasha's requests of 11 August 2011 (detailed in paragraphs 1 above), the Commissioner finds that the Ministers failed to respond to Mr Okasha's requests for information within the 20 working days allowed by section 10(1) of FOISA.

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13. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
14. As the Ministers did not provide Mr Okasha with a response to his requirements for review until 10 January 2012 and 7 February 2012, the Commissioner finds that they failed to deal with Mr Okasha's requirements for review within the 20 working days required by section 21(1) of FOISA.
15. Given that the Ministers have now provided Mr Okasha with responses to his requirements for review, the Commissioner does not require the Ministers to take any action in this case.

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), by failing to respond to Mr Okasha's requests for information within the timescale laid down by section 10(1) of FOISA and by failing to comply with Okasha's requirements for review as required by section 21(1) of FOISA.

She does not require the Ministers to take any action in respect of these failures in response to Mr Okasha's application.

Appeal

Should either Mr Okasha 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.

Margaret Keyse
Acting Scottish Information Commissioner
9 March 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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.

...

- (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.

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