

Decision Notice



Decision 141/2012 Mr Jock Meikle and the Scottish Ministers

Cost of alcoholic drink

Reference No: 201200547

Decision Date: 28 August 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle

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Summary

Mr Meikle asked the Scottish Ministers (the Ministers) various questions about money which had been spent on alcohol. The Ministers advised Mr Meikle that they did not hold some of the information he had asked for and that responding to the remainder of his requests would cost more than £600 (which meant they did not have to reply).

Following an investigation, the Commissioner found that the Ministers had failed to respond to Mr Meikle's requests for information and requirements for review in time.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1) (Time for compliance); 21(1) (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 6 November 2011, Mr Meikle wrote to the Ministers requesting the following information:
 - 1) By how much is alcoholic drink subsidised by the taxpayer in a) the bars in the Scottish Parliament and b) the bars of the Scottish Civil Service.
 - 2) The quantity and cost to the taxpayer over the last 24 months of alcoholic drink used by a) the First Minister; b) Nicola Sturgeon; c) the Cabinet and d) the entire Civil Service, in the course of official entertainment.
 - 3) The amount of expenses related to alcoholic drink claimed on MSPs' expenses by (a) the First Minister and (b) Nicola Sturgeon.



2. The Ministers responded on 23 March 2012, apologising for the delay in responding. In relation to requests 1) and 3), the Ministers told Mr Meikle that they did not hold the information, but that some of the information might be held by the Scottish Parliament. They also advised Mr Meikle that the cost of responding to request 2) would exceed £600. Consequently, by virtue of section 12(1) of FOISA, they were not obliged to respond. The Ministers also suggested to Mr Meikle that he narrow his request to a specific policy area.
3. On 23 March 2012 and again on 28 March 2012, Mr Meikle wrote to the Ministers requesting a review of their decision.
4. The Ministers notified Mr Meikle of the outcome of their review on 15 May 2012. The review dealt only with parts 2(a) and (b) of Mr Meikle's request confirming that, by virtue of section 12 of FOISA, they were not required to comply with the requests as to do so would exceed the prescribed cost limit of £600.
5. On 10 June 2012, Mr Meikle, who had been in earlier communication with the Commissioner, 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.
6. The application was validated by establishing that Mr Meikle 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 that those requests. The case was then allocated to an investigating officer.

Investigation

7. On 19 July 2012, the investigating officer notified the Ministers in writing that an application had been received from Mr Meikle, 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.
8. During the investigation, Mr Meikle commented that he was particularly disappointed with the time the Ministers had taken to respond to his requests and requirement for review and that wished a decision to be issued by the Commissioner on these points only. He confirmed he had submitted a narrowed request as suggested by the Ministers.
9. The Ministers responded with their submissions on 8 August 2012. These, along with the relevant submissions received from Mr Meikle, will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

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

Technical issues

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. The Ministers advised the Commissioner that they have no record of having received any reminders, Mr Meikle advised the Commissioner that he wrote to the Ministers in December 2011 and in January and March 2012 seeking a response to his request.
13. The Ministers explained that, unfortunately, Mr Meikle's correspondence was not initially identified as a request for information. They explained that, once the request had been identified, it was forwarded to the correct policy team for response on 14 March 2012.
14. The Ministers have advised the Commissioner that they have discussed the allocation and identification of requests with the Ministerial Correspondence staff and Private Office staff in order to ensure that they adhere to the guidance on dealing with requests in future, and hope that this will prevent a recurrence. Given that the Ministers did not respond to the request of 6 November 2012 until 23 March 2012, the Commissioner finds that they failed to respond within the 20 working days allowed by section 10(1) of FOISA.
15. 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 again to exceptions which are not relevant in this case.
16. Mr Meikle's requirement for review was dated 23 March 2012. Given that the response to the requirement for review was dated 15 May 2012, the Commissioner finds that the Ministers failed to comply with section 21(1) of FOISA.
17. The Commissioner notes that, in correspondence with Mr Meikle, the Ministers apologised for the delay in responding to his request and the steps taken to avoid such a recurrence. The Commissioner notes, with some disappointment, that this matter had been ongoing for over six months before the Ministers responded to Mr Meikle's requirement for review. She hopes that the steps taken as outlined at paragraph 14 will prevent a recurrence.



DECISION

The Commissioner finds that the Scottish 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 Meikle, in particular by failing to respond to Mr Meikle's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. She does not require the Ministers to take any action in respect of these failures in response to Mr Meikle's application.

Appeal

Should either Mr Meikle 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.

Margaret Keyse
Head of Enforcement
28 August 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.

...

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-

...

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.

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