

Decision Notice



Decision 039/2013 Mr Tom Gordon and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201300352
Decision Date: 07 March 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 information request made by Mr Tom Gordon.

Background

1. On 30 October 2012, Mr Gordon wrote to the Ministers requesting certain specified information.
2. Mr Gordon received no response to his request for information.
3. On 11 December 2012, Mr Gordon wrote to the Ministers requesting a review in respect of their failure to respond.
4. Mr Gordon did not receive a response to his requirement for review and, on 29 January 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 Gordon 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

6. On 12 February 2013, the Ministers were notified in writing that an application had been received from Mr Gordon and invited to comment on the application.
7. The Ministers responded on the same day, advising that a response was provided to Mr Gordon on 31 January 2013. A copy of this response was provided.



Commissioner's analysis and findings

8. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
9. As the Ministers did not provide a response to Mr Gordon's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
10. 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.
11. As the Ministers did not provide a response to Mr Gordon's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
12. Given that the Ministers have now responded to Mr Gordon's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr Gordon's application. She notes that in their response to Mr Gordon's requirement for review, they apologise for the delay in responding and explained that his request was mislaid after it was received.

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 Gordon, in particular by failing to respond to Mr Gordon's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr Gordon's requirement for review, the Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr Gordon's application.

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Mr Tom Gordon
and the Scottish Ministers



Appeal

Should either Mr Gordon 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.

Euan McCulloch
Deputy Head of Enforcement
07 March 2013



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-

- (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.

...