

Decision Notice 008/2021

Correspondence with Health Protection Scotland relating to Covid-19 care home guidance – failure to respond

The Applicant

Public authority: Scottish Ministers

Case Ref: 202001432



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Ministers (the Ministers) for information relating to correspondence with Health Protection Scotland about Covid-19 care home guidance. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Ministers failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

The Commissioner requires the Ministers to comply with the requirement for review.

Background

1. The Applicant made an information request to the Ministers on 16 June 2020.
2. The Ministers did not respond to the information request.
3. On 23 September 2020, the Applicant wrote to the Ministers requiring a review in respect of their failure to respond.
4. The Applicant did not receive a response to her requirement for review.
5. On 1 December 2020, the Applicant wrote to the Commissioner, stating that she was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On the same day, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
7. The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

8. The Ministers confirmed receipt of the Applicant's request and request for review and explained that at the time of receipt they were receiving a significant volume of correspondence. The Ministers acknowledged that the handling of this request has fallen short of the standard required and apologised for these failures.
9. 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. This is subject to qualifications which are not relevant in this case.
10. It is a matter of fact that the Ministers did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
11. 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. Again, this is subject to qualifications which are not relevant in this case.
12. It is a matter of fact that the Ministers did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

13. 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: he now requires a review to be carried out in accordance with section 21.
14. The Commissioner recommends that the Ministers consider whether it would be appropriate to apologise to the Applicant for their failure to comply.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, the Ministers failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) of 21(1) of FOISA.

The Commissioner requires the Ministers to issue a review, by **1 March 2021**.

Appeal

Should either the Applicant or the 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.

Enforcement

If the Ministers fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Ministers as if they had committed a contempt of court.

Claire Stephen
Deputy Head of Enforcement

14 January 2021

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