



# Decision Notice 037/2023

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## Information regarding a specified prisoner - failure to respond

**Applicant:** The Applicant  
**Authority:** Scottish Ministers  
**Case Ref:** 202300442

### Summary

The Applicant asked the Authority for information about a specified prisoner, to include written or verbal communications between Scottish Ministers, minutes of meetings and records of correspondence with the Scottish Prison Service. This decision finds that the Authority failed to respond to the information request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

### Background

1. The Applicant made an information request to the Authority on 27 January 2023.
2. The Authority acknowledged the request on 27 January 2023.
3. On 24 February 2023, the Authority wrote to the Applicant, stating that it was taking longer than expected to deal with the request and apologising for the delay.
4. The Applicant did not receive a response to her request.
5. On 7 March 2023, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
6. The Authority acknowledged the requirement for review on 8 March 2023. It again stated that it was taking longer than expected to deal with the request and apologised for the delay.
7. The Applicant did not receive a response to her requirement for review.

8. The Applicant chased up the Authority's response on 15 March 2023. She received an acknowledgement from the Authority on 16 March 2023, again apologising for the delay and explaining that it was taking longer than expected to respond, due to a high volume of cases on a number of related issues. The Applicant chased up the Authority's response again on 23 March 2023.
9. The Applicant wrote to the Commissioner on 6 April 2023, stating that she was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

## **Investigation**

11. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 11 April 2023.
12. The Commissioner received submissions from the Authority on 25 April 2023. These submissions are considered below.
13. The Authority acknowledged that it had failed to respond to the request and requirement for review.
14. The Authority explained that the delay was due to resourcing pressures that meant workloads had to be reprioritised, and the volume of information that needed to be assessed.
15. The Authority confirmed that a response was being prepared for issue to the Applicant in due course.
16. 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.
17. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
18. 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.
19. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
20. 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 Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
21. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. The Commissioner requires the Authority to issue a response to the Applicant by **16 June 2023**.

## **Appeal**

Should either the Applicant or the Authority 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 Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

**Wendy Snedden**  
**Freedom of Information Officer**

**2 May 2023**