



Scottish Information
Commissioner

**Decision 164/2006 – Mr M and the Scottish
Executive**

*Request for copies of notes taken during a meeting with the
applicant*

**Applicant: Mr M
Authority: The Scottish Executive
Case No: 200601141
Decision Date: 28 August 2006**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 164/2006 – Mr M and the Scottish Executive

Failure of the Scottish Executive to respond to a request for copies of notes taken during a meeting with the applicant

Facts

Mr M contacted the Scottish Executive (the Executive) to request copies of notes which were taken during a meeting he attended in 2003 to discuss the resolution of an ongoing complaint. This request was sent as part of lengthy ongoing correspondence in relation to Mr M's complaint, which has led to Mr M being classed as a "persistent correspondent" by the Executive.

The Executive failed to respond to this correspondence, or Mr M's subsequent request for review.

The Commissioner found that the Executive had failed with regard to the Freedom of Information (Scotland) Act 2002 (FOISA), in failing to respond to Mr M's correspondence. The Commissioner required the Executive to issue Mr M with an appropriate response.

Background

1. On 23 March 2006, Mr M contacted the Executive to request copies of notes taken at a meeting held in June 2003 between the Executive and Mr M. This meeting was held in an attempt to resolve an ongoing complaint which was initially made by Mr M to the Executive in 1999.
2. When no response was received to this correspondence within 20 working days, Mr M wrote to the Executive to request that it review its handling of his information request on 13 May 2006.
3. When no response was again received in relation to this correspondence, Mr M submitted an application for decision to the Commissioner. This application was received by the Commissioner on 12 July 2006.



Investigation

4. Mr M's application was validated by establishing he had made a request for information to a Scottish public authority, and had appealed to the Commissioner only after asking the authority to review its original decision.
5. The Executive was contacted for its comments with regard to its handling of Mr M's request.
6. In response, the Executive informed the Commissioner that it had been in receipt of protracted correspondence from Mr M on this issue since August 1999. The Executive stated that, in the intervening years, it had attempted to find a solution to Mr M's complaint. The Executive went on to state, however, that the volume and nature of his correspondence was such that it eventually moved to designate him as a "persistent correspondent" in November 2001. As a result, Mr M was informed by the Executive that any future correspondence on these matters would be acknowledged only.
7. The Executive indicated that Mr M's voluminous correspondence in relation to this issue continued, however. Additional measures were then subsequently taken by the Executive in order to seek a resolution to this issue. These measures included the meeting held in June 2003, and later involved the introduction of measures to block emails from Mr M in April 2006.
8. The Executive indicated that, as a consequence of the actions taken to deal with Mr M's correspondence, it had inadvertently overlooked both Mr M's FOISA request and his subsequent request for review. The Executive acknowledged in its submission that, as a result, it had failed to meet its obligations under FOISA. The Executive added, however, that the circumstances of this case were considered to be "very exceptional", and that individuals were rarely designated as persistent correspondents.
9. The Executive added that the staff who dealt with this case have now been fully briefed on the need to identify and respond appropriately to requests for information within correspondence from persistent correspondents.



The Commissioner's Analysis and Findings

10. As the Executive has acknowledged in its submission to the Commissioner, requests for information which are received by Scottish public authorities must be responded to in accordance with FOISA. While the Commissioner acknowledges the Executive's submissions that the correspondence received from Mr M in recent years has been both repetitive and voluminous in nature, this nevertheless cannot be considered as grounds for the Executive's failure to respond to the information request contained within Mr M's correspondence of 23 March 2006.
11. Section 10(1) of FOISA requires Scottish public authorities to respond to the information requests they receive within 20 working days of receipt.
12. In addition, section 21(1) of FOISA also requires authorities to respond to the requests for review they receive within 20 working days (even if only to advise the applicant that they consider that they are not obliged to comply with the requirement for review in terms of section 21(8) of FOISA).
13. The Commissioner therefore finds that the Executive failed to comply with section 10(1) of FOISA in dealing with Mr M's information request, while also failing to comply with section 21(1) of FOISA in dealing with his request for review.

Decision

The Commissioner finds that the Scottish Executive (the Executive) failed to deal with Mr M's request for information in accordance with Part I of FOISA, in that it failed to comply with sections 10(1) and 21(1) in its handling of his request.

The Commissioner requires the Executive to respond to Mr M's request for information by either disclosing the information he has requested, or by issuing a notice under section 16 (Refusal of request) or section 17 (notice that information is not held).

The Commissioner requires the Executive to respond to Mr M within two months of receipt of this notice.



Appeal

Should either party wish to appeal 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 of receipt of this notice.

Margaret Keyse
Head of Investigations
28 August 2006