

Decision Notice 102/2021

Scottish Government policy decisions concerning hospitality sector restrictions – failure to respond

Applicant: The Applicant

Public authority: Scottish Ministers

Case Ref: 202100448



Summary

The Applicant asked the Scottish Ministers (the Ministers) for information about scientific, statistical or medical evidence for restrictions on the Scottish hospitality sector, from 1 March 2020 to 4 November 2020.

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.

Background

1. The Applicant made an information request to the Ministers on 4 November 2020.
2. The Ministers responded to the information request on 23 February 2021.
3. On 4 March 2021, the Applicant wrote to the Ministers, requiring a review of their decision.
4. The Applicant did not receive a response to its requirement for review.
5. The Applicant wrote to the Commissioner on 8 April 2021, stating that it was dissatisfied with the Ministers' failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 26 April 2021, 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. 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.
9. 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.
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. Again, this is subject to qualifications which are not relevant in this case.
11. 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.
12. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
13. The Ministers responded to the Applicant's requirement for review on 11 May 2021, apologising that the requirement for review had been inadvertently overlooked due to an administrative error. The Commissioner does not require them to take any further action in relation to the Applicant's application.

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) and 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of these failures in response to the Applicant's application, given that a review outcome was issued on 11 May 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.

Euan McCulloch
Deputy Head of Enforcement

29 June 2021

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