

Decision Notice

Decision 120/2019: Mr A and the Scottish Ministers

Consultation on Disability Assistance: failure to respond within statutory timescales

Reference No: 201901202

Decision Date: 13 August 2019



Scottish Information
Commissioner

Summary

On 18 March 2019, Mr A asked the Scottish Ministers (the Ministers) for information about the Consultation on Disability Assistance. The decision finds that the Ministers failed to comply with Mr A's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
18 March 2019	Mr A made an information request to the Ministers.
26 April 2019	The Ministers responded to the information request.
24 May 2019	Mr A wrote to the Ministers requiring a review of their decision.
	Mr A did not receive a response to his requirement for review.
16 July 2019	Mr A wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failure to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
23 July 2019	The Ministers were notified in writing that an application had been received from Mr A were invited to comment on the application.
7 August 2019	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Ministers did not provide a response to Mr A's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
3. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
4. The Ministers responded to Mr A's requirement for review on 7 August 2019, so the Commissioner does not require them to take any further action in relation to Mr A'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 2002 (FOISA) in responding to Mr A's requirement for review within the timescales laid down by section 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect this failure, in response to Mr A's application, given that a review was issued on 7 August 2019.

Appeal

Should either Mr A or the Scottish 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 Scottish Ministers fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Scottish Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Scottish Ministers as if it had committed a contempt of court.

Claire Stephen
Deputy Head of Enforcement

13 August 2019

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