

Decision Notice



Decision 156/2012 Mr Q and the Scottish Ministers

Failure to carry out review

Reference No: 201201195

Decision Date: 11 September 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Q.

Background

1. On 15 March 2012, Mr Q wrote to the Ministers requesting certain specified information, set out in six points.
2. The Ministers responded on 17 April 2012.
3. On 23 April 2012, Mr Q wrote to the Ministers requesting a review of their decision in relation to one of the points in his request (point five).
4. Mr Q did not receive a response to his requirement for review and on 13 June 2012 wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Q had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 26 June 2012, the Ministers were notified in writing that an application had been received from Mr Q and were invited to comment on the application.
7. The Ministers responded on 30 July 2012 and acknowledged that they had failed to comply with the required timescale in this case. The Ministers apologised and explained that this failure to respond had been due to confusion caused by Mr Q making a number of requests to the same area of government around the same time. The Ministers explained that there was a miscommunication over which request was being responded to and, as a result, no-one had realised that this particular request for review had not been allocated for response.



8. The Ministers indicated that in future they would try to ensure that the records of multiple requests were detailed and highlight what action is required, with details of the relevant deadline for response.
9. The Ministers provided the Commissioner with a copy of a letter notifying Mr Q of the outcome of their review, which was issued to him on 27 July 2012.
10. On 1 August 2012, the investigating officer contacted the Ministers querying the content of the review outcome provided to Mr Q on 27 July 2012, since it appeared not to address point five in Mr Q's information request.
11. The investigating officer received a letter from Mr Q on 3 August 2012, in which he also expressed dissatisfaction with the review response issued by the Ministers.
12. The Ministers responded to the investigating officer's email on 3 August 2012. The Ministers acknowledged that their decision to respond to Mr Q's request for review in the way they had could have caused confusion and they offered to provide a further response to Mr Q, making clear their response to his current request for review. The investigating officer advised the Ministers that a new review outcome would be required.
13. The Ministers issued this new review outcome to Mr Q on 7 August 2012.

Commissioner's analysis and findings

14. 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, subject to exceptions which are not relevant to this case.
15. Since the Ministers did not provide a response to Mr Q's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA in dealing with Mr Q's request for information.
16. Given that the Ministers have now responded to Mr Q's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr Q's application.



DECISION

The Commissioner finds that the Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Q, in particular by failing to respond to Mr Q's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the Ministers have since responded to Mr Q's requirement for review, the Commissioner does not require the Ministers to take any action in response to this failure.

Appeal

Should either Mr Q or the Scottish Ministers wish to appeal against 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 after the date of intimation of this decision notice.

Alison Davies
Acting Deputy Head of Enforcement
11 September 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

21 Review by Scottish public authority

Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...