

# Decision Notice



Decision 243/2013 Mr Andrew Picken and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201302329

Decision Date: 30 October 2013

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**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 the information request made by Mr Picken.

## Background

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1. On 18 July 2013, Mr Picken wrote to the Ministers requesting certain specified information.
2. Mr Picken received no response to his request for information.
3. On 31 August 2013, Mr Picken wrote to the Ministers requesting a review of their failure to respond.
4. Mr Picken did not receive a response to his requirement for review and, on 5 October 2013, wrote to the Commissioner, 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 Picken 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

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6. On 10 October 2013, the Ministers were notified in writing that an application had been received from Mr Picken and were invited to comment on the application.
7. The Ministers responded on 28 October 2013 by providing a copy of a review response sent to Mr Picken on 25 October 2013. The Ministers did not make any other submission to the Commissioner.



## Commissioner's analysis and findings

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8. In their letter to Mr Picken of 25 October 2013, the Ministers apologised for the length of time taken to respond to his request.
9. 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, subject to certain exceptions which are not relevant in this case.
10. Since the Ministers did not provide a response to Mr Picken's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
11. 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 certain exceptions which are not relevant in this case.
12. Since the Ministers did not provide a response to Mr Picken's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
13. Given that the Ministers have now responded to Mr Picken's requirement for review, the Commissioner does not require them to take any further action in this case.

## 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 dealing with the information request made by Mr Picken, in particular by failing to respond to his request and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr Picken's requirement for review, the Commissioner does not require them to take any further action.



## Appeal

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Should either Mr Picken 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.

**Margaret Keyse**  
**Head of Enforcement**  
**30 October 2013**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

##### 21 Review by Scottish public authority

- (1) 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.

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