

Decision Notice



Decision 091/2012 Mr Andrew Whitaker of the Scotsman and the Scottish Ministers

Failure to comply with required timescales or carry out review

Reference No: 201200646

Decision Date: 28 May 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle

Doubledykes Road



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 Andrew Whitaker.

Background

1. On 22 November 2011, Mr Whitaker wrote to the Ministers requesting certain specified information.
2. Mr Whitaker received no response to his request for information.
3. On 21 February 2012, Mr Whitaker wrote to the Ministers requesting a review of their decision in respect of their failure to respond.
4. Mr Whitaker did not receive a response to his requirement for review and on 4 April 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 Whitaker 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 12 April 2012, the Ministers were notified in writing that an application had been received from Mr Whitaker and were invited to comment on the application.
7. The Ministers failed to respond to this letter and the investigating officer sent a reminder email on 9 May 2012.
8. On 10 May 2012, the Ministers responded to this email and apologised for the delay in providing submissions but they noted that due to staff illness they would need additional time to prepare a response.



9. On 15 May 2012, the investigating officer contacted the Ministers again asking when they expected to provide a response to the letter dated 12 April 2012, and whether they intended to respond to Mr Whitaker's request for review.
10. The Ministers acknowledged this email the same day (15 May 2012) and advised that they would endeavour to respond to the investigating officer's letter as soon as possible and to confirm that a response has been issued to Mr Whittaker.
11. On 23 May 2012, the investigating officer sent a further reminder to the Ministers asking for a progress update.
12. No acknowledgement or response to this email was received and on 25 May 2012, the investigating officer advised the Ministers that if she did not receive a response to her letter of 12 April 2012 by the end of that day (or evidence that they had provided a response to Mr Whitaker's request for review) the Commissioner would issue a Decision Notice on Monday 28 May 2012.
13. On 25 May 2012, the Ministers responded and advised that they were hoping to get a response to Mr Whitaker that day and that they would provide the investigating officer with a copy of any response that was issued. However, no further communication was received from the Ministers that day.

Commissioner's analysis and findings

14. As noted above, the Commissioner has received no submissions from the Ministers in relation to this case. As a result, she has made her decision solely on the information provided to her by Mr Whittaker. This included evidence that his request and subsequent request for review had been emailed to the Scottish Ministers on the dates detailed above.
15. The Commissioner is very disappointed to note that more than six months after Mr Whittaker made his request for information, the Ministers have not yet provided any response to him. In the circumstances she can only comment that the Ministers' handling of this particular request involves a significant breach of the requirements of FOISA, which gives her cause for real concern about their practice. She is also disappointed that more than six weeks after the commencement of her investigation, the Ministers have not offered any comments to explain this failure to her.
16. 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.
17. Since the Ministers did not provide a response to Mr Whitaker's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.



18. 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.
19. Since the Ministers did not provide a response to Mr Whitaker's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
20. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Ministers failed to discharge these requirements: she now requires a review to be carried out in accordance with them.

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 Whitaker, in particular by failing to respond to Mr Whitaker's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA

The Commissioner therefore requires the Ministers to respond to Mr Whitaker's request for review in accordance with the requirements of section 21 of FOISA, by 12 July 2011

Appeal

Should either Mr Whitaker 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.

Claire Sigsworth
Deputy Head of Enforcement
28 May 2012



Appendix

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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