

# Decision Notice



Decision 033/2013 Mr Michael Williams and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201300235

Decision Date: 28 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle

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## 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 Williams.

## Background

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1. On 23 October 2012, Mr Williams wrote to the Ministers requesting certain specified information.
2. Mr Williams received no response to his request for information.
3. On 23 November 2012, Mr Williams wrote to the Ministers, seeking a review in respect of their failure to respond.
4. Mr Williams did not receive a response to his requirement for review and on 15 January 2013 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 Williams made a request for information to a Scottish public authority and 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 23 January 2013, the Ministers were notified in writing that an application had been received from Mr Williams and were invited to comment on the application.
7. The Ministers responded on 20 February 2013, explaining that due to the volume of Mr Williams' email correspondence with them, he was advised that his emails would be filtered and was asked to annotate any future FOI requests clearly so that these could be identified.



8. The Ministers advised that Mr Williams' request of 23 October 2012 coincided with continued and frequent correspondence about another similar request, which had already been answered. As a consequence of this, and the steps being taken to manage Mr Williams' email communications, the Ministers missed the request under consideration here.
9. The Ministers explained that in an email to Mr Williams of 14 January 2013, a member of their staff noted that he was unaware of any outstanding information requests (from Mr Williams) at that time and invited Mr Williams to let the Ministers know if he believed this was not the case. The Ministers noted that they received no response to this email, despite it preceding Mr Williams' application to the Commissioner.
10. In their submissions, the Ministers outlined steps they were taking to minimise the risk of future information requests from Mr Williams being overlooked.
11. The Ministers provided a response to Mr Williams' requirement for review on 20 February 2013, which Mr Williams confirmed he had received.

## Commissioner's analysis and findings

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12. 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.
13. Since the Ministers did not provide a response to Mr Williams' request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
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 certain exceptions which are not relevant in this case.
15. Since the Ministers did not provide a response to Mr Williams' requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
16. The Commissioner acknowledges that the volume of correspondence generated by some applicants may present certain challenges, but these do not relieve a Scottish public authority of the duty to respond to information requests, in accordance with Part 1 of FOISA, where such requests are received. Mr Williams' request, while it might perhaps have been more clearly framed as seeking recorded information held by the Ministers, could be interpreted as a request for information for the purposes of section 1(1) of FOISA: in any event, the Ministers have not argued that is not. In the circumstances, the Commissioner is pleased to note that the Ministers are taking steps to minimise the risk of future requests being overlooked.
17. Given that the Ministers have now responded to Mr Williams' requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr Williams' application.



## DECISION

The Commissioner finds that the Scottish 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 Williams, in particular by failing to respond to Mr Williams' request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Scottish Ministers have now provided a response to Mr Williams' requirement for review, the Commissioner does not require the Scottish Ministers to take any action in respect of these failures in response to Mr Williams' request.

## Appeal

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Should either Mr Williams 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**28 February 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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