

Decision 156/2007 Mr S and the Scottish Executive

Failure to respond to a request for review

Applicant: Mr S
Authority: The Scottish Executive
Case No: 200701046
Decision Date: 27 August 2007

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



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Information request made to the Scottish Executive – Mr S was dissatisfied with response and submitted a request for review – Scottish Executive failed to respond to Mr S's request for review – the Commissioner found that the Scottish Executive failed to comply with the timescales for review set down by section 21 of FOISA

Facts

1. Mr S made an information request to the Scottish Executive (the Executive) on 9 February 2007.
2. The Executive responded on 26 March 2007, refusing to release information on the basis that it was exempt from release under the Freedom of Information (Scotland) Act 2002 (FOISA).
3. Mr S emailed the Executive on 17 May 2007 and asked it to carry out a review.
5. On 12 July 2007, Mr S received a response from the Executive indicating that the review would not be considered until 31 July 2007. On 27 July 2007, not having received a response to his request for review, Mr S submitted an application to the Commissioner for a decision in this matter.
6. Whilst Mr S also complained that he was dissatisfied with the response to his initial request for information and that other documents were not attached as indicated within the response of 12 July 2007, at this point the Commissioner can only consider the Executive's apparent failure to respond to the request for review within the time laid down in section 21(1) of FOISA.
7. The case was subsequently allocated to an investigating officer. The application was validated by establishing that Mr S had made a valid information request to a Scottish public authority and had appealed to the Commissioner only after asking the authority to review its response to his request.
8. On 27 July 2007, the officer notified the Executive, in terms of section 49(3)(a) of FOISA, of the application made by Mr S and asked for its comments on the application.



9. The Executive responded on 10 August 2007. It acknowledged that it had failed to carry out a review within the 20 working days required by section 21(1) and stated that this was because of a combination of work pressures and leave.
10. The Executive also intimated that the review of its decision in relation to Mr S's original request was almost complete and that the review response would be issued during the week ending 17 August 2007. It also stated that this Office would be informed once the review was complete.
11. The Executive did not inform the applicant by 17 August 2007 of the outcome of the review and has not informed this Office that the review has been completed.

Decision

The Commissioner finds that the Scottish Executive failed to respond to Mr S's request for review within the 20 working days allowed by section 21(1) of FOISA.

While the Commissioner notes that the Scottish Executive agreed to carry out a review, it has still not done so, and he therefore requires it to carry out a review and respond to Mr S's request within 45 days of receipt of this decision notice.

Appeal

Should either Mr S or the Scottish Executive wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this decision notice.

Euan McCulloch
Deputy Head of Investigations
27 August 2007