



Scottish Information
Commissioner

**Decision 210/2007 Mr Rob Edwards (Sunday Herald) and
the Scottish Ministers**

Failure to respond to a request for review

Applicant: Mr Rob Edwards (Sunday Herald)

Authority: Scottish Ministers

Case No: 200701317

Decision Date: 8 November 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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KY16 9DS



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Failure of the Scottish Ministers to respond to a request for review within the statutory timescale set out in the Freedom of Information (Scotland) Act 2002

Facts

1. Mr Edwards wrote to the Scottish Ministers on 30 August 2006, requesting copies of any e-mails, memos, reports, correspondence, minutes or other documents relating to discussions between the Scottish Ministers' environment media and communications staff and their counterparts at Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA) over the last year.
2. Section 10(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) requires a Scottish public authority (subject to certain qualifications which are not relevant here) to comply with a request for information promptly, and in any event by not later than the twentieth working day after it receives the request.
3. Mr Edwards had not received a substantive response to his information request by 21 November 2006 and he wrote again to the Scottish Ministers asking for an indication of when a response might be forthcoming.
4. The Scottish Ministers acknowledged receipt of Mr Edwards' e-mail request on 21 November 2006. In their e-mail the Scottish Ministers informed Mr Edwards that they expected to be able to answer his question within the next two weeks.
5. On 8 February 2007, Mr Edwards wrote to the Scottish Ministers complaining that it had been over five months since he had submitted his initial request, to which he had still received no response.
6. On 13 February 2007, the Scottish Ministers wrote back to Mr Edwards conceding that they had not yet responded and that they were well overdue to do so. They informed Mr Edwards that they hoped to be in a position to respond shortly although they could not give a firm indication of precise timing. They added that they hoped to be able to advise Mr Edwards more fully by the end of the week.



7. On 12 March 2007, the Scottish Ministers wrote to Mr Edwards, providing a full response and apologising for the delay. In their letter the Scottish Ministers informed Mr Edwards that it was perfectly likely that documents which he may have received from SEPA and SNH on the matter in question were not held by the Scottish Ministers, and vice versa. However the Scottish Ministers also stated that they did hold information which fell within the scope of Mr Edwards' request. Some of that information was provided to Mr Edwards, but some was also withheld under various exemptions in FOISA.
8. On 12 March 2007, Mr Edwards wrote to the Scottish Ministers, requesting a review of their decision to withhold information on communications between their environment media team and SNH and SEPA.
9. On 29 March 2007, the Scottish Ministers acknowledged receipt of Mr Edwards' request for review. In their e-mail, the Scottish Ministers asked Mr Edwards to submit for their consideration any clarifying information on his request for review, should such information exist. The Scottish Ministers stated that they would otherwise review the case on the basis of Mr Edwards' request for review and would contact him within 20 working days.
10. On 31 July 2007, Mr Edwards wrote to the Scottish Ministers complaining that four months had elapsed since they had acknowledged his request for review.
11. The Scottish Ministers wrote back to Mr Edwards on 1 August 2007, apologising for the delay and promising to respond to Mr Edwards as quickly as possible. The Scottish Ministers stated that the recent election and its outcome had caused a hiatus in the review process.
12. Mr Edwards wrote back to the Scottish Ministers on 3 September 2007, still having received no response to his request for a review. In his e-mail, Mr Edwards asked again for a response.
13. On 8 October 2007, Mr Edwards applied to the Scottish Information Commissioner, requesting that he investigate the Scottish Ministers' failure to respond to his request for review. The case was allocated to an investigating officer and the application validated by establishing that Mr Edwards 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 his request.
14. On 16 October 2007, the Scottish Ministers were notified of the application made by Mr Edwards and their comments were invited in terms of section 49(3)(a) of FOISA, by means of an information notice under section 50(1)(a) of FOISA.



15. A response was received from the Scottish Ministers on 30 October 2007. In their response, the Scottish Ministers acknowledged that they had not responded to Mr Edwards' request for a review in line with section 21(1) of FOISA, which gives a Scottish public authority a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
16. In their response the Ministers stated that the review requested by Mr Edwards had been carried out and the response was almost ready to be issued by 29 April 2007, subject to Ministerial clearance. However, there had not been enough time for the response to be cleared before the Scottish Parliament election on 3 May 2007. A new administration was then elected and, since some of the papers covered by Mr Edwards' request fell within the scope of the Convention on Access by Ministers to the Papers of a Previous Administration (the Convention), the new Ministers were unable to clear the response pending further work on the interaction between the Convention and FOISA. The Scottish Ministers advised that this work had required consultation with opposition parties and had taken until the beginning of August 2007.
17. The Scottish Ministers acknowledged that they had not kept Mr Edwards up to date with the progress of the review and forwarded their apologies to Mr Edwards for the delay. The Scottish Ministers added that they were working to have the review response cleared and issued to Mr Edwards as soon as possible.

Decision

The Commissioner finds that the Scottish Ministers did not deal with Mr Edwards' request for information in accordance with the requirements of Part 1 of FOISA in that they failed to comply with the request within the 20 working days allowed by section 10(1) of FOISA.

The Commissioner finds that the Scottish Ministers did not deal with Mr Edwards' request for review in accordance with the requirements of Part 1 of FOISA in that they failed to comply within the 20 working days allowed by section 21(1) of FOISA.

The Commissioner requires the Scottish Ministers respond to Mr Edwards' request for a review within 45 days after the date of intimation of this decision notice.



Appeal

Should Mr Edwards or the Scottish Ministers wish to appeal against this decision, there is a 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 notice.

Euan McCulloch
Deputy Head of Investigations
8 November 2007