

Decision 222/2007 - Mr James Murphy Brown and the Scottish Ministers

Request for correspondence

**Applicant: Mr James Murphy Brown
Authority: The Scottish Ministers
Case No: 200701353
Decision Date: 22 November 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Decision 222/2007 – Mr James Murphy Brown and the Scottish Ministers

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

Facts

1. On 10 June 2007, Mr Brown submitted a request under the Freedom of Information (Scotland) Act 2002 (FOISA) for information regarding correspondence to the Scottish Ministers (the Ministers).
2. On 15 June 2007 the Ministers acknowledged this letter. Following receipt of this, Mr Brown wrote again on 21 June 2007 to correct the date of a letter to which his original request referred.
3. The Ministers responded to Mr Brown's letter of 21 June 2007 (making no specific reference to the original letter of 10 June) on 29 June 2007. This response stated that the matter raised by Mr Brown was the responsibility of the UK Government and, accordingly, that Mr Brown's letter had been forwarded to the relevant UK Government department.
4. On 17 July 2007, Mr Brown wrote to the Ministers requesting a review of their decision. In particular, he noted that the reply provided did not comply with his original request. I understand that this letter was also passed to a UK government department, and no response was provided by the Ministers.
5. On 9 October 2007, Mr Brown applied to the Scottish Information Commissioner, requesting that he investigate the Ministers' failure to respond to his request for review within the relevant timescales set down in FOISA.
6. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
7. On 18 October 2007, the Commissioner notified the Ministers of the application made by Mr Brown and invited their comments in terms of section 49(3)(a) of FOISA.



8. A response was received from the Ministers on 1 November 2007. In their response, the Ministers accepted that they had not responded to Mr Brown's request for information of 10 June 2007 in line with section 21(1) of FOISA, and stated that whilst their response of 29 June 2007 had the intention of being helpful to Mr Brown, it was not in accord with their procedures for dealing with FOISA requests.
9. The Ministers explained that they had conducted a search to locate Mr Brown's request for review within the unit of the Scottish Government to which it was addressed. This search revealed no record of Mr Brown's letter of 17 July 2007.
10. The Ministers subsequently undertook a review of this matter and issued a response to Mr Brown's request for review on 20 November 2007.
11. Although the Ministers were unable to find any record of Mr Brown's request for a review dated 17 July 2007, the Commissioner considers that, on the balance of probabilities, this was received by them. The Commissioner therefore finds that the Ministers failed to respond to Mr Brown's request for review within the 20 working days allowed by section 21(1) of FOISA and failed to comply with Part 1 of FOISA.
12. However, the Commissioner notes that, after being provided with a copy of the request for review by his Office, the Ministers acted to remedy this matter, and conducted a review of their handling of Mr Brown's request. Accordingly, the Commissioner does not require any action to be taken in response to this decision.

Decision

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

In failing to comply with these timescales the Ministers failed to comply with Part 1 of FOISA.

For the reasons set out above, the Commissioner does not require the Ministers to take any action in response to this decision.



Appeal

Should either Mr Brown or the Scottish Ministers 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 after the date of intimation of this notice.

Claire Sigsworth
Deputy Head of Investigations
22 November 2007