

Decision Notice



Decision 157/2008 West Highland Free Press and the Scottish Ministers

Failure to respond to a request for review within the required timescale

Reference No: 200801664

Decision Date: 11 December 2008

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Kevin Dunion

Scottish Information Commissioner

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Summary

The Scottish Ministers (the Ministers) did not respond to the West Highland Free Press's requirement for review but did so during the investigation. Following this investigation, the Commissioner found that the Ministers had failed to comply with the requirement for review within the timescale specified in section 21(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. On 14 July 2008, the West Highland Free Press submitted an information request to the Ministers for the following information:
All communications between Ministers and within the Scottish Government, including written submissions, minutes, memos, records of telephone conversations and e-mails, concerning the appointment of a Chairman to the Gaelic Media Service/MG ALBA
2. The West Highland Free Press was provided with a response to this request on 8 August 2008. In this response, the Ministers released certain information to the West Highland Free Press, but refused to release other information relevant to the request and relied on the exemptions in sections 29(1)(b), 30(b) and 38(1)(b) of FOISA for this.
3. On 23 September 2008, the West Highland Free Press submitted a request for a review of the Ministers decision. In particular, the West Highland Free Press argued that as the appointment in question was no longer disputed there could be no ongoing reason, other than protecting Ministers and possibly officials from embarrassment, to withhold the exchanges that had taken place.
4. The request for review was acknowledged on 29 September 2008, but West Highland Free Press received no further response to the request and on 13 November 2008 wrote to the Commissioner's Office, stating that it was dissatisfied with the failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that the West Highland Free Press 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 21 November 2008, the Ministers were notified in writing that an application had been received from the West Highland Free Press and were invited to comment on the application, all in terms of section 49(3)(a) of FOISA. The Ministers responded on 5 December 2008, accepting that they had not responded to the West Highland Free Press's request for review.
7. The Ministers explained that they had received the West Highland Free Press's request for a review on 24 September 2008 and that the reviewer had written to the applicant on 29 September 2008 advising that the review was underway. The Ministers also pointed out that the request for review had been submitted to the Permanent Secretary rather than the official to whom the West Highland Free Press had been instructed to submit it. However, they also advised that in an effort to be helpful they had accepted the request for review as valid (in accordance with their normal practice).
8. The Ministers went on to advise that a draft response to the West Highland Free Press's request for review had been completed by mid October but required to be circulated to other officials and Ministers for comment. Due to the pressure of other work and annual leave, this internal clearance process had taken much longer than it should have done, and the Ministers offered their apologies for this. They pointed out that an email had been sent to the West Highland Free Press on 21 October, advising that there was likely to be a delay.
9. In making their response to the Commissioner, the Ministers advised that a response to the request for review had been sent to the West Highland Free Press on 4 December 2008. The West Highland Free Press confirmed that that it had received this information and also that it wished the Commissioner to reach a decision on the Ministers' failure to respond to the request for review within the relevant statutory timescale.

Commissioner's analysis and findings

10. Under section 49(1) of FOISA, except where the application is frivolous or vexatious, or where the application has been withdrawn or abandoned, the Commissioner must arrive at a decision in respect of any application made to him under section 47(1) of FOISA (that is, as to whether the applicant's request for information has been dealt with in accordance with Part 1 of FOISA) and must issue a decision notice to both the applicant and the public authority.
11. The Commissioner is satisfied that the West Highland Free Press made a request for information to the Ministers on 14 July 2008 which was valid in terms of section 1(1) of FOISA, followed by a valid requirement for a review (in terms of section 20 of FOISA) on 23 September 2008.

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12. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, subject to exceptions which do not apply in this case.
13. The Commissioner finds that the Ministers failed to respond to the West Highland Free Press's requirement for review within the 20 working days allowed under section 21(1) of FOISA.
14. In failing to comply with this timescale, the Ministers failed to comply with Part 1 of FOISA.
15. The Commissioner notes that the Ministers have now provided a response to the West Highland Free Press and have provided an apology for their failure to do so within the relevant timescale.

DECISION

The Commissioner finds that the Scottish Ministers (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 the West Highland Free Press, in particular by failing to respond to the West Highland Free Press's requirement for review within the timescale laid down in section 21(1) of FOISA. Given that the Ministers have now responded to the requirement for review, the Commissioner does not require any further action in response to this particular application in relation to these failures.

Appeal

Should either the West Highland Free Press 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 Investigations
11 December 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

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.