

# Decision Notice



Decision 062/2009 Mr Tom Gordon and the Scottish Ministers

Failure to respond to requirements for review

Reference No: 200900760, 200900762, 200900764, 200900765 and  
200900766

Decision Date: 27 May 2009

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements (in particular the relevant timescales) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information requests made by Mr Gordon.

## Background

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1. On 13 January 2009, Mr Gordon sent four separate emails to the Ministers, in each case requesting “a copy of all correspondence between First Minister Alex Salmond, or his office, and [respectively] Sir Angus Grossart, Sir George Mathewson, Brian Souter and Sandi Thom, or his/her office/ representatives, since May 2007”. On 25 January 2009, Mr Gordon made a request for “a copy of all correspondence between First Minister Alex Salmond, or his office, and Sir Fred Goodwin, or his office, since May 2007”. These requests were five of 29 similar requests made to the Ministers by Mr Gordon in January 2009.
2. The Ministers responded to all five requests on 4 February 2009. In each case the Ministers applied section 14(1) of FOISA, stating that the request was vexatious and supplying arguments in support of this assertion.
3. On 23 February 2009, Mr Gordon wrote to the Ministers (separately in respect of each request) requesting a review of the relevant decision. On 23 March 2009, the Ministers responded, confirming that a review was being undertaken but advising that it would not be completed “within the 20 working day deadline normally applicable to internal FOI reviews”.
4. Mr Gordon received no further correspondence from the Ministers in respect of his request for review and on 22 April 2009 wrote to the Commissioner’s Office, stating that he was dissatisfied with these failures 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 Gordon had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



## Investigation

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6. On 29 April 2009, the Ministers were notified in writing that an application had been received from Mr Gordon and were invited to comment on the application.
7. The Ministers responded on 7 May 2009. They explained that in the period when Mr Gordon's requests and review requests were submitted there had been 50 requests "targeted" at the First Minister's Office and this had caused significant handling difficulties. In addition, the Ministers submitted that the First Minister's Office was busy and pressurised, as it became involved in all major issues dealt with by the Scottish Government. Responding to all the FOI requests "had to be fitted around" the regular work of the office and the nature of that work meant that the designated officer dealing with the requests often had to be out of the office for days at a time or large parts of the day and so was not always available to work on FOISA requests.
8. The Ministers went on to argue that it was not possible to bring in and train extra staff to deal with an influx of requests, as a good knowledge of the operation of the First Minister's office was essential for this purpose. In addition, they did not believe it to be practical to allocate additional staff to particular parts of the Government in anticipation of an influx of requests, as they considered it impossible to predict with any degree of accuracy which areas were going to be the "target" of requests. The Ministers submitted that a particular mitigating factor in these cases had been the departure of the original designated officer from post.
9. The Ministers acknowledged that the 20 working day period was statutory and submitted that they would always endeavour to meet this when possible, but pointed in this case to the "significant demands and many mitigating circumstances" referred to above, "including further general requests from Mr Gordon on similar subjects", which had interfered in the process of responding to the five review requests. They confirmed that the requests were all being worked on and that they hoped to respond to Mr Gordon by 21 May 2009.

## Commissioner's analysis and findings

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10. 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, subject to exceptions which are not relevant in this case.
11. The Commissioner finds that the Ministers failed to respond to Mr Gordon's five requests for review made on 23 February 2009 within the 20 working days allowed under section 21(1) of FOISA.
12. In failing to comply with the timescales the Ministers failed to comply with Part 1 of FOISA.



13. The Commissioner understands that the First Minister's Office is a particularly busy one. However he would be extremely concerned if the argument was being advanced that, as a consequence, it is understandable or only to be expected that the requirements for compliance may not be met. As the Ministers acknowledge the completion of a review within the 20 working day period specified in section 21(1) is a statutory requirement, and with that in mind the Commissioner cannot accept that compliance with it (and for that matter dealing with requests under section 1(1) of FOISA more generally) is something to be "fitted around" the regular work of any part of a Scottish public authority. On the contrary, compliance with the requirements of Part 1 of FOISA should be seen as a core responsibility of the authority and addressed as such, with consequences for management and resourcing. This may be thought to be particularly the case for the First Minister's Office. Given its role it is bound to attract requests for information; given its status, it is bound to be looked to as setting an example of good practice to other parts of the Scottish Government.
14. The Commissioner notes the Ministers' hope that responses would be issued to Mr Gordon by 21 May 2009. However he has not been provided with any confirmation that this had taken place by the time of this decision (27 May 2009).

## DECISION

The Commissioner finds that the Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Gordon, in particular by failing to respond to any of Mr Gordon's requirements for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner therefore requires the Ministers to respond to Mr Gordon's five requests for review within 45 days after the date of intimation of this decision notice, that is by 11 July 2009.

Decision 062/2009  
Mr Tom Gordon  
and the Scottish Ministers



## Appeal

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Should either Mr Gordon or the 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**27 May 2009**



## Appendix

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### 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.

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##### 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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