

Decision Notice



Decision 072/2009 Ms Polly Jones and the Scottish Ministers

Failure to respond to a request and request for review

Reference No: 200900929
Decision Date: 25 June 2009

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
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Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Ms Jones.

Background

1. On 12 December 2008, Ms Jones sent an email to the Ministers requesting the following information: “all documents drafted or produced by the Enterprise Minister Jim Mather involving ‘mind maps’”.
2. No response was provided by the Ministers to this request.
3. On 26 February 2009, Ms Jones wrote to the Ministers requesting a review of their failure to provide a response to her request.
4. No response was provided by the Ministers to this requirement for review.
5. Ms Jones did not receive a response to her request or request for review and on 15 May 2009 wrote to the Commissioner’s Office, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Ms Jones 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

7. On 2 June 2009, the Ministers were notified in writing that an application had been received from Ms Jones and invited to comment on the application, as required by section 49(3)(a) of FOISA.



8. The Ministers responded on 12 June 2009 confirming that they had received Ms Jones' request on 12 December 2008. The Ministers explained that, following receipt of the request, it had been decided that the Private Office Management Team would take the lead on responding to the request. The Ministers have explained that this is a small team with one official routinely taking responsibility for FOI requests and Parliamentary Questions. However, the Ministers submitted that, on this occasion, the receipt of the request was not recorded on the Information Request Tracker.
9. The Ministers acknowledged that Ms Jones contacted them on various occasions for an update, but that unfortunately none was received by her (although unanswered attempts were made to contact her by phone).
10. The Ministers indicated that, while little could be offered in mitigation of their failure to respond, the lead official, in discussion with Mr Mather's Private Secretary had agreed on the way in which the request would be responded to. However, the Ministers acknowledged that no response in the terms agreed with Mr Mather's Private Secretary was ever issued to Ms Jones.
11. The Ministers accepted that their handling of the request was well below acceptable standards, and apologised for this. They stated that a response would be provided to Ms Jones as quickly as possible, and this was subsequently issued on 19 June 2009.

Commissioner's analysis and findings

12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant to this case.
13. The Ministers have acknowledged that they received Ms Jones' request of 12 December 2008, but that no response was made to it.
14. The Commissioner therefore finds that the Ministers failed to respond to Ms Jones' request for information of 12 December 2008, within the 20 working days allowed under section 10(1) of FOISA.
15. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant in this case.
16. The Ministers have also acknowledged that no response was made to Ms Jones' requirement for review.
17. The Commissioner therefore finds that the Ministers failed to respond to Ms Jones' requirement for review, within the 20 working days allowed under section 21(1) of FOISA.



18. The Commissioner has noted that the Ministers had given some consideration to this request, but failed to complete any response. He would encourage them to take steps to ensure that all information requests are logged to ensure that they are processed in line with appropriate timescales and procedures.
19. The Commissioner is particularly concerned that Ms Jones' request has received no kind of response given the number of follow up emails that she submitted. He considers that the Ministers failure to respond to these communications, other than by attempting contact by telephone (but apparently without leaving messages), was discourteous, as well as a breach of the statutory timescales.
20. The Commissioner notes that a response was provided to Ms Jones' information request on 19 June 2009. In the circumstances, he does not require any action to be taken in relation to these breaches in response to this decision.

DECISION

The Commissioner finds that the Scottish Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Ms Jones, in particular by failing to respond to Ms Jones request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA. As a response has now been provided to Ms Jones, the Commissioner does not require the Scottish Ministers to take any action in relation to these breaches in response to this decision. .

Appeal

Should either Ms Jones 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.

Claire Sigsworth
Deputy Head of Enforcement
25 June 2009



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.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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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