

Decision Notice



Decision 101/2011 Mrs T and the Scottish Ministers

Failure to respond

Reference No: 201100500
Decision Date: 25 May 2011

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
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 information request made by Mrs T.

Background

1. On 5 January 2011, Mrs T wrote to the Ministers requesting information relating to a complaint.
2. Mrs T received no response to this request and on, 10 February 2011, she wrote to the Ministers again, requesting a review of their handling of her request and asking to be provided with the information relating to a complaint.
3. Mrs T did not receive a response to her request for review and, on 15 March 2011, she wrote to the Commissioner, stating that she was dissatisfied with that failure and applying for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Mrs T 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

5. On 6 April 2011, the Ministers were notified in writing that an application had been received from Mrs T and were invited to comment on the application. They were asked to comment in particular on why Mrs T's request and subsequent request for review had received no response.
6. The Ministers responded with their comments on 27 April 2011. They explained that Mrs T has been corresponding with the Ministers on matters leading to the complaint to which her request relates for a long period. As a result of this extended correspondence, the Ministers informed Mrs T in 2011 that her correspondence on this issue would no longer be passed on to Ministers.



7. They indicated that following receipt of Mrs T's of 5 January 2011 (and another letter of 30 January which restated this request), staff from the Ministerial Correspondence Unit (MCU) had written to her on 7 February to restate the fact that the Scottish Government had nothing further to add to previous correspondence on the issue.
8. The Ministers acknowledged that Mrs T's request for review of 10 February 2011 made clear that she wished her request to be handled under FOISA, and that this should have been recognised and acted upon. They indicated that their handling of this request, at both request and review stages, had been unsatisfactory and they apologised unreservedly for this.
9. They went on to note that staff in the MCU have been reminded of the obligations in FOISA, and stated that they would endeavour to ensure that this is not repeated.
10. On 5 May 2011, the Ministers issued a response to Mrs T's request for review.
11. Mrs T has confirmed that she has received the Ministers' response to her request for review, but she continues to be dissatisfied with the Ministers' failure to comply with the timescales laid down in FOISA.

Commissioner's analysis and findings

12. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
13. The Ministers failed to issue any response to Mrs T's request for information of 5 January 2011 within the required period, and so the Commissioner finds that they failed to comply with section 10(1) of FOISA in this case.
14. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant to this case.
15. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached.



16. The Commissioner's view is that, where no response has been made to an information request, the first two options are unavailable to the authority, and so the only appropriate review outcome in a case such as this is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c) of FOISA.
17. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
18. The Ministers failed to provide any response to Mrs T's requirement for review within the timescale specified in section 21(1). The Commissioner therefore finds that they failed to respond to Mrs T's requirement for review of 10 February 2011 in accordance with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA.
19. The Commissioner notes that the Ministers acknowledged their failings in this case and that they took steps to rectify them during the investigation. He does not require any further action to be taken in relation to these breaches in response to this decision.

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 Mrs T, in particular by failing to respond to Mrs T's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers took steps to rectify this breach during the investigation, the Commissioner does not require the Ministers to take any further action in response to these failures in response to this decision.

Appeal

Should either Mrs T 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.

Margaret Keyse
Head of Enforcement
25 May 2011



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
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

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