

Decision Notice



Decision 223/2011 Mr David Rule and the Scottish Ministers

Failure to comply with required timescales

Reference No: 201101901

Decision Date: 11 November 2011

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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 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr David Rule.

Background

1. On 28 March 2011, Mr Rule wrote to the Ministers to ask for information in a certain email.
2. The way in which this request was dealt with by the Ministers was considered in *Decision 131/2011 Mr David Rule and the Scottish Ministers*, in which the Commissioner required the Ministers to respond to the request, as a valid request for information, by 22 August 2011.
3. On 22 August 2011, the Ministers responded to the request of 28 March 2011. They provided Mr Rule with a redacted version of the information he had asked for, and advised that some information was exempt from disclosure under section 38(1)(b) of FOISA.
4. On 24 August 2011, Mr Rule asked the Ministers to review their decision, disagreeing that the exemption in section 38(1)(b) of FOISA was applicable.
5. Mr Rule received no response to his request for review and, on 6 October 2011, he wrote to the Commissioner expressing his dissatisfaction and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Rule had made his 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 failure to respond to that request. The case was then allocated to an investigating officer.

Investigation

7. On 14 October 2011, the Ministers were notified in writing that an application had been received from Mr Rule and were invited to comment on the application.



8. On 8 November 2011, the Ministers wrote to advise the Commissioner that a review of the response to Mr Rule's request had been carried out, which had resulted in full disclosure of the information he had requested.
9. Mr Rule asked the Commissioner to issue a decision notice on his application, as he remained dissatisfied with the length of time the Ministers had taken to provide information first requested on 28 March 2011.

Commissioner's analysis and findings

10. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
11. Mr Rule made his request for review on 24 August 2011 but received no response until 8 November 2011. The Commissioner therefore finds that the Ministers failed to deal with Mr Rule's requirement for review within the 20 working days required by section 21(1) of FOISA.
12. The Ministers advised the Commissioner that there appeared to have been a misunderstanding over who should take the review forward, which was not discovered until the staff member concerned returned from a period working overseas. The Ministers considered that this was a scenario which was unlikely to occur in the future.
13. The Commissioner has noted the Ministers' failure to comply with the statutory timescale laid down in section 21(1) of FOISA, and the reason to which this failure is attributed. On this occasion (taking into account the fact that Mr Rule has finally received the information he requested) he does not require the Ministers to take any further steps in relation to this matter.

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) by failing to comply with Mr Rule's requirement for review within the timescale required by section 21(1) of FOISA.

Mr Rule having received a response during the investigation, the Commissioner does not require the Ministers to take any further steps in relation to this matter in response to Mr Rule's application.



Appeal

Should either Mr Rule 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.

Euan McCulloch
Deputy Head of Enforcement
11 November 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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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