

Decision Notice



Decision 023/2012 Mr David Rule and the Scottish Ministers

Failure to comply with timescale for review

Reference No: 201101931

Decision Date: 03 February 2012

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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 26 July 2011, Mr Rule wrote to the Ministers requesting all information held regarding the Commissioner's *Decision 025/2011 Mr Simon Johnson and the Scottish Ministers*.
2. The Ministers responded on 24 August 2011. They refused Mr Rule's request in terms of section 12(1) of FOSIA, on the basis that the cost of compliance would exceed £600.
3. On the same day, Mr Rule wrote to the Ministers requesting a review of their decision. In particular, Mr Rule disagreed that the cost of complying with his request would exceed £600.
4. The Ministers notified Mr Rule of the outcome of their review on 13 October 2011. They upheld their previous decision in full, noting that the volume and complexity of the information requested was such that the cost of meeting the request would be significantly greater than £600.
5. On 13 October 2011, Mr Rule wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Rule expressed dissatisfaction with the Ministers' refusal of his request on cost grounds, and also with their failure to respond to his request for review within the required timescale.
6. The application was validated by establishing that Mr Rule 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 3 November 2011, the Ministers were notified in writing that an application had been received from Mr Rule. They were given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions.
8. The Ministers provided their submissions in response to this request, and also in response to further questions from the investigating officer.
9. During the investigation, having receiving a summary of the investigating officer's assessment of the case, Mr Rule decided to withdraw his objections to the Ministers' refusal of his request under section 12 of FOISA. However, he indicated that he remained dissatisfied with the Ministers' failure to respond to his request for review within the required timescales, and asked that a decision be issued on this point. For this reason, this decision will address only that technical matter.

Commissioner's analysis and findings

10. As noted above, Mr Rule emailed the Ministers asking them to conduct a review of their handling of his information request on 24 August 2011. The Ministers notified him of the outcome of their review on 13 October 2011, some 36 working days later.
11. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
12. Since the Ministers did not provide a response to Mr Rule's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
13. The Ministers have explained that a review response was issued late to Mr Rule due to a combination of the scale of the request and staff involved in the original request being on annual leave during the 20 day period and so being unavailable to discuss with the reviewer.
14. The Commissioner has noted this explanation, and also that the Ministers apologised for the delay when providing their response to Mr Rule. However, he would also point out that FOISA creates an expectation that public authorities will have systems enabling them to respond to requests for review in all cases within the 20 working day period. He expects authorities to be able to do so, and the absence of key staff on annual leave should not be a cause of breaches of this statutory requirement.



15. Given that the Ministers did, however, respond to Mr Rule's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr Rule's application.

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 Mr Rule, in particular by failing to respond to his requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the Ministers went on to respond to Mr Rule's requirement for review after the 20 working day period had ended, the Commissioner does not require them to take any action in respect of this failure 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 notice.

Euan McCulloch
Deputy Head of Enforcement
03 February 2012



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.

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