

Decision Notice



Decision 105/2013 Mr Henry Hepburn and Education Scotland

Failure to comply with timescales

Reference No: 201301236
Decision Date: 04 June 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether Education Scotland complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hepburn on 20 March 2013.

Background

1. On 20 March 2013, Mr Hepburn wrote to Education Scotland requesting certain specified information.
2. Education Scotland responded on 5 April 2013.
3. On 12 April 2013, Mr Hepburn wrote to Education Scotland requesting a review of its decision.
4. Mr Hepburn did not receive a response to his requirement for review and, on 23 May 2013, wrote to the Commissioner's Office, stating that he was dissatisfied with that failure 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 Hepburn made a request for information to a Scottish public authority and 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

6. Education Scotland is an agency of the Scottish Ministers (the Ministers) and, on 29 May 2013, in line with agreed procedures, the Ministers were notified in writing that an application had been received from Mr Hepburn and invited to comment on that application, as required by section 49(3)(a) of FOISA.
7. The Ministers responded on 31 May 2013 and informed the investigating officer that Education Scotland had provided a review response to Mr Hepburn on 29 May 2013. The Ministers provided a copy of that response.



Commissioner's analysis and findings

8. 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.
9. Since Education Scotland did not provide a response to Mr Hepburn's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
10. Given that Education Scotland has now responded to Mr Hepburn's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Hepburn's application.

DECISION

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

Given that Education Scotland has now provided Mr Hepburn with a review response, the Commissioner does not require Education Scotland to take any action in respect of this failure, in response to Mr Hepburn's application.

Appeal

Should either Mr Hepburn or Education Scotland 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
04 June 2013



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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