Decision Notice

Decision 179/2014 Mr Tom Gordon and the Scottish Ministers

Recordings and transcripts of an interview: failure to respond within statutory timescales

Reference No: 201401621
Decision Date: 12 August 2014

Summary

On 2 May 2014, Mr Gordon asked the Scottish Ministers (the Ministers) for the recordings and transcripts held of the interview given by the First Minister to Alastair Campbell. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Ministers failed to comply with Mr Gordon's requirement for review within the timescale set down by FOISA.

Background

Date	Action
2 May 2014	Mr Gordon made an information request to the Ministers.
	The Ministers did not respond to the information request.
6 June 2014	Mr Gordon wrote to the Ministers, requiring a review in respect of their failure to respond.
	Mr Gordon did not receive a response to his requirement for review.
16 July 2014	Mr Gordon wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
28 July 2014	The Ministers were notified in writing that an application had been received from Mr Gordon and was invited to comment on the application.
12 August 2014	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1.   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. This is subject to qualifications which are not relevant in this case.

2.   It is a matter of fact that the Ministers did not provide a response to Mr Gordon's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.

3.   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. Again, this is subject to qualifications which are not relevant in this case.

4.   It is a matter of fact that the Ministers did not provide a response to Mr Gordon's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

5.   The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.

6.   The Ministers responded to Mr Gordon on 11 August 2014, and apologised to Mr Gordon for not responding earlier. The Ministers provided the Commissioner with a copy of that response. As the Ministers have now responded, the Commissioner does not require them to take any action.

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 responding to the information request made by Mr Gordon. In particular, the Ministers failed to respond to Mr Gordon's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr Gordon's requirement for review, the Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr Gordon's application.

Appeal

Should either Mr Gordon or the Scottish Ministers wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
12 August 2014