

Decision Notice

Decision 160/2016: Ms G and the Scottish Public Services Ombudsman

Lessons Learned: failure to respond within statutory timescales

Reference No: 201600933

Decision Date: 14 July 2016



Scottish Information
Commissioner

Summary

On 18 November 2015, Ms G asked the Scottish Public Services Ombudsman (the SPSO) for information about what lessons had been learned in relation to a case investigated by the SPSO. This decision finds that the SPSO 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 SPSO failed to comply with Ms G's requirement for review within the timescale set down by FOISA.

The Commissioner has ordered the SPSO to comply with the requirement for review.

Background

Date	Action
18 November 2015	Ms G made an information request to the SPSO.
	The SPSO did not respond to the information request.
6 January 2016	Ms G wrote to the SPSO requiring a review of its failure to respond.
	Ms G did not receive a response to her requirement for review.
17 May 2016	Ms G wrote to the Commissioner's Office (clarified on 21 June 2016), stating that she was dissatisfied with the SPSO's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
23 June 2016	The SPSO was notified in writing that an application had been received from Ms G and was invited to comment on the application.
11 July 2016	The Commissioner received submissions from the SPSO. These submissions are considered below.

Commissioner's analysis and findings

1. The SPSO acknowledged that it had received Ms G's request and requirement for review, explaining the request had been missed among the other matters contained in Ms G's correspondence.
2. The SPSO confirmed steps are now being taken to ensure a review is carried out. This had not been completed at the time of this decision.
3. The SPSO confirmed that it would remind staff of the importance of identifying information requests contained within other communications. The Commissioner welcomes this.
4. 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.
5. It is a matter of fact that the SPSO did not provide a response to Ms G's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

6. 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.
7. It is a matter of fact that the SPSO did not provide a response to Ms G's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
8. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the SPSO failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
9. The Commissioner recommends that the SPSO considers whether it would be appropriate to apologise to Ms G for its failure to comply.

Decision

The Commissioner finds that the Scottish Public Services Ombudsman (the SPSO) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms G. In particular, the SPSO failed to respond to Ms G's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the SPSO to provide a response to Ms G's request for review, by **29 August 2016**.

Appeal

Should either Ms G or the SPSO 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.

Enforcement

If the SPSO fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SPSO has failed to comply. The Court has the right to inquire into the matter and may deal with the SPSO as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

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