

# Decision Notice

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## **Decision 237/2016: Mr Peter Cherbi and the Scottish Ministers**

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**Stepping down/appointment of the Lord Advocate and Solicitor General: failure to respond within statutory timescale**

Reference No: 201601844

Decision Date: 07 November 2016



Scottish Information  
Commissioner

## Summary

The Scottish Ministers (the Ministers) were asked for information about the stepping down of the Lord Advocate Frank Mulholland and the Solicitor General Lesley Thomson, and the appointment of their successors. 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).

## Background

Date	Action
3 June 2016	Mr Cherbi made two separate information requests to the Ministers.
12 August 2016	The Ministers responded to these information requests.
12 August 2016	Mr Cherbi wrote to the Ministers, requiring a review of their decision.
7 September 2016	The Ministers provided Mr Cherbi with their review outcome.
6 October 2016	Mr Cherbi wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failure to respond timeously to his requests for information, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
28 October 2016	The Ministers were notified in writing that an application had been received from Mr Cherbi and were invited to comment on the application.
3 November 2016	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 Cherbi's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
3. The Ministers have explained that the delays in this case were due to the scope of the requests being re-evaluated. The Ministers' initial handling of the request did not fully reflect the scope of the request and the initial interpretation of the request had to be re-evaluated. This process led to additional searches being undertaken, which involved more officials and took more time. The Ministers apologised for this delay but noted that the delays meant that the response they were able to provide was full and accurate.
4. To avoid a repetition of such failures, the Ministers submitted that their FOI Unit has improved its FOI tracking processes to ensure that any issues regarding the interpretation of requests is identified at an early stage. The FOI Unit has reconfigured its staffing to ensure

that a specific grade of staff will have specific responsibility for tracking all responses and will intervene to ensure on-time completion.

5. As the Ministers responded to Mr Cherbi's requirement for review on 7 September 2016, the Commissioner does not require them to take any further action in relation to Mr Cherbi's application.

## Decision

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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 Cherbi. In particular, the Ministers failed to respond to Mr Cherbi's request for information within the timescale laid down by section 10(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of this failure, in response to Mr Cherbi's application, given that the Ministers have responded to Mr Cherbi's requests and have put steps in place to prevent a recurrence of such failures.

## Appeal

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Should either Mr Cherbi or the 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.

**Alison Davies**  
**Deputy Head of Enforcement**

**07 November 2016**

**Scottish Information Commissioner**

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