

Decision Notice

Decision 247/2016: Mr Peter Cherbi and the Scottish Ministers

Stepping down of the Lord Advocate/Solicitor General: failure to respond within statutory timescales

Reference No: 201601942

Decision Date: 17 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. This decision finds that the Ministers failed to respond to the request and the request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
12 August 2016	Mr Cherbi made an information request to the Ministers.
	The Ministers did not respond to the information request.
19 September 2016	Mr Cherbi wrote to the Ministers requiring a review of their decision in respect of their failure to respond.
	Mr Cherbi did not receive a response to his requirement for review.
24 October 2016	Mr Cherbi wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
31 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.
15 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. 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 Cherbi's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
5. In their submissions, the Ministers explained that this particular request followed two very similarly worded requests. They had not identified the different wording and thought a reply

had been sent. They would endeavour to ensure similar circumstances do not arise in the future.

6. As the Ministers responded to Mr Cherbi's requirement for review on 14 November 2016, the Commissioner does not require them to take any further action in relation to Mr Cherbi's application.
7. The Commissioner notes that the Ministers have apologised to Mr Cherbi for their failure to comply.

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

As a response has now been provided to Mr Cherbi's requirement for review, the Commissioner does not require the Ministers to take any action in relation to these breaches in response to this decision.

Appeal

Should either Mr Cherbi 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.

Alison Davies
Deputy Head of Enforcement

17 November 2016

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