

Decision Notice

Decision 053/2018: Mr David Bateman and the Scottish Ministers

Ministerial engagements: failure to respond within statutory timescales

Reference No: 201800130

Decision Date: 16 April 2018



Scottish Information
Commissioner

Summary

On 19 October 2017, Mr Bateman asked the Ministers for information about Ministerial engagements. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002. The decision also finds that the Ministers failed to comply with Mr Bateman's requirement for review within the timescale set down by FOISA.

As a review outcome has now been provided to Mr Bateman, the Commissioner does not require any further action to be taken by the Ministers.

Background

Date	Action
19 October 2017	Mr Bateman made an information request to the Ministers.
	The Ministers did not respond to the information request.
12 December 2017	Mr Bateman wrote to the Ministers requiring a review in respect of their failure to respond.
	Mr Bateman did not receive a response to his requirement for review.
18 January 2018	Mr Bateman 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.
8 March 2018	The Ministers were notified in writing that an application had been received from Mr Bateman and were invited to comment on the application.
23 March 2018	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 Bateman'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 Bateman'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 Ministers responded to Mr Bateman's requirement for review on 22 March 2018, so the Commissioner does not require them to take any further action in relation to Mr Bateman's application.
6. In their letter to Mr Bateman of 22 March 2018, the Commissioner notes that the Ministers apologised to Mr Bateman for their failure to comply. In their submissions to the Commissioner, they acknowledged that multiple requests on the same subject (as had been received in relation to the subject matter of this case) could not excuse delays in responding.

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

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr Bateman's application, given that a review outcome has since been issued.

Appeal

Should either Mr Bateman 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.

Euan McCulloch
Deputy Head of Enforcement

16 April 2018

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