

Decision Notice 140/2020

Provisions in place to deal with a pandemic in Scotland – failure to respond

Applicant: The Applicant

Public authority: Scottish Ministers

Case Ref: 202000949



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Ministers (the Ministers) if a plan had been prepared for Scotland to deal with an epidemic or pandemic and, if so, what provisions had been put in place. The Ministers were also asked if the plan “Exercise Cygnus” produced by the UK Government had been provided to them and, if so, what action had been taken concerning the matters raised in the document.

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 the Applicant’s requirement for review within the timescale set down by FOISA.

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

Background

1. On 15 May 2020 the Applicant made an information request to the Ministers.
2. The Ministers did not respond to the information request.
3. On 19 June 2020, the Applicant wrote to the Ministers, requiring a review of their failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. On 19 August 2020, the Applicant wrote to the Commissioner, 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.
6. On 15 October 2020, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
7. The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner’s analysis and findings

8. The Ministers acknowledged the Applicant’s request and requirement for review had been received and fully accepted that the Applicant did not receive responses within the timescales allowed in FOISA.
9. The Ministers explained that, due to administrative errors, the Applicant’s correspondence was not responded to and that the team handling requests had received an unprecedented volume of correspondence at a time when other pressures were significant.
10. 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. (This timescale was temporarily extended to 60 working days by the Coronavirus (Scotland) Act 2020, which came into force on 7 April 2020, but the timescale was taken back to 20 working days by the Coronavirus (Scotland) (No. 2) Act 2020, with effect from 27 May 2020 – as this request had not been responded to by 27 May, the time for responding reverted to 20 working days on that date.)

11. It is a matter of fact that the Ministers did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
12. 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.
13. It is a matter of fact that the Ministers did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
14. 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 Ministers failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
15. The Ministers confirmed the Applicant's requirement for review would be responded to, although this had not been done by the date of this decision.
16. The Commissioner recommends that the Ministers considers whether it would be appropriate to apologise to the Applicant 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 the Applicant. In particular, the Ministers failed to respond to the Applicant'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 Ministers to respond to the Applicant's request for review, by **Monday 21 December 2020**.

Appeal

Should either the Applicant 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.

Enforcement

If the Scottish Ministers (the Ministers) fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Ministers as if they had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

5 November 2020

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