



Scottish Information
Commissioner

**Decision 168/2007 – Mrs Alison Bourne and Transport
Scotland**

***Benefit/cost ratio figures for phases 1 and 2 of the Edinburgh
Tram Project***

**Applicant: Mrs Alison Bourne
Authority: Transport Scotland
Case No: 200600934
Decision Date: 20 September 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 168/2007 – Mrs Alison Bourne and Transport Scotland

Failure of Transport Scotland to respond to a request for information and a request for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002 (FOISA)

Facts

1. On 10 February 2006, Mrs Bourne submitted an information request to Mr Tavish Scott, then Minister for Transport in the Scottish Executive. Mrs Bourne requested the following information about the Edinburgh Tram Project:
 - The benefit/cost ratio figure at that time and whether that information related only to Phase 1 (Airport – Ocean Terminal) or included Phase 2 (Haymarket – Granton)
 - A detailed breakdown of the benefit/cost ratio (for Phase 1, Phases 1 and 2 together, and Phase 2), if available, in particular the “benefits” figures for each scenario and how this was comprised.
2. Mrs Bourne was provided with a response to this request on 24 March 2006 from Transport Scotland, which is the agency of the Scottish Executive with responsibility for the matters raised. In its response to Mrs Bourne’s request, Transport Scotland indicated that it was not willing to disclose any information to Mrs Bourne that would answer her request and that it was relying on the exemptions in section 33(1)(b) and section 33(2)(b) of FOISA for doing so.
3. On 19 April 2006, Mrs Bourne submitted a request for a review to Transport Scotland, in which she asked that Transport Scotland to review its decision not to release the information she requested to her.
4. On 20 May 2006, Mrs Bourne applied to the Scottish Information Commissioner, requesting that he investigate Transport Scotland’s failure to respond to her request for information and request for a review within the relevant timescales laid down in FOISA.
5. The Commissioner notified the then Scottish Executive (now known as the Scottish Government), of which Transport Scotland is an agency, of the application made by Mrs Bourne and invited its comments (all in terms of section 49(3)(a) of FOISA) on 5 June 2006. The Scottish Executive Freedom of Information Unit responded on 29 June 2006. In its response, the Scottish Executive accepted that it had not responded to Mrs Bourne’s information request within the timescale set out in section 10(1) of FOISA.



6. The Scottish Executive also accepted in its submissions that it had not provided Mrs Bourne with a response to her request for a review, as is required under section 21 of FOISA. The Scottish Executive submitted that the review had been underway at the time at which Mrs Bourne's appeal to the Commissioner was validated. The Scottish Executive did advise that it regretted the delay in responding to Mrs Bourne's request for a review, and explained that Transport Scotland was aware of its obligations under FOISA and regretted the inconvenience caused to Mrs Bourne.

Commissioner's Analysis and Findings

7. Under section 49(1) of FOISA, except where an application is frivolous or vexatious, or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a Decision Notice to both the applicant and the public authority.
8. The Commissioner is satisfied that Mrs Bourne made a request for information to Transport Scotland, an agency of the then Scottish Executive, on 10 February 2006 which was valid in terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 19 April 2006.
9. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information.
10. The Commissioner is satisfied that Transport Scotland did not respond to Mrs Bourne's request for information within the timescale laid down in section 10(1) of FOISA.
11. The Commissioner is satisfied that Mrs Bourne did submit a valid request for a review to Transport Scotland in line with section 20 of FOISA.
12. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
13. The Commissioner is satisfied that Transport Scotland did not respond to Mrs Bourne's requirement for a review within the timescale laid down under section 21(1) of FOISA, and indeed still has not done so. The Commissioner does, however, acknowledge that Transport Scotland has since provided Ms Bourne with certain information relevant to her request.



Decision

The Commissioner finds that Transport Scotland did not deal with Mrs Bourne's request for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with sections 10(1) and 21(1).

The Commissioner requires Transport Scotland to respond to Mrs Bourne's request for review in terms of section 21 of FOISA. The Commissioner requires Transport Scotland to do this within 45 days of the date of intimation of this decision notice.

Appeal

Should either party wish to appeal this decision, there is an appeal to the Court of Session on a point of law only. Any appeal must be made within 42 days after the date of intimation of this notice.

Euan McCulloch
Deputy Head of Investigations
20 September 2007