

Decision Notice



Decision 196/2010 Mr Mark Howarth and the Scottish Ministers

Compliance with required timescales

Reference No: 201001820
Decision Date: 29 November 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Mark Howarth (Mr Howarth).

Background

1. On 15 February 2010, Mr Howarth wrote to the Ministers requesting the following information:
 - Details of purchases of alcohol by the Scottish Government directorates listed below in the past twelve months including what alcohol was bought, from whom, in what quantity and at what price.
 - Strategy and Ministerial Support
 - Healthcare Policy and Strategy
 - Primary and Community Care
 - Chief Medical Officer
 - Criminal Justice
 - Police and Community Safety
 - Director of Scottish Procurement
 - Details of purchases of alcohol by the offices of the First Minister and five cabinet secretaries in the past twelve months including what alcohol was bought, from whom, in what quantity and at what price.
2. The Ministers contacted Mr Howarth with an update on 15 March 2010. They indicated that they were working on this request and would provide a response as soon as possible. Mr Howarth sought updates on progress by email on 5 May and 25 May. In response to each of these requests Mr Howarth was told that the Ministers should be in a position to respond soon.
3. The Ministers then responded to Mr Howarth's request by email on 4 June 2010. They provided the total cost of alcohol purchases by the Directorates specified. However, they went on to explain that the information about individual items and costings was not held in a way that would allow them to identify the breakdown requested.



4. With respect to the part of Mr Howarth's request seeking details of alcohol purchases by the offices of the First Minister and the five Cabinet Secretaries, the Ministers provided a figure for the total spend on alcohol across 54 events for which a full breakdown of costs was available.
5. On 6 June 2010, Mr Howarth wrote to the Ministers requesting a review of their decision. In particular, Mr Howarth noted that the Ministers had not claimed that any information was exempt, or invoked sections 12(1) or 17 of FOISA, yet he was of the view that the response was ambiguous as to whether all the information has been provided. Mr Howarth asked for clarification on this point, and also requested that more detailed breakdown of the costs, as sought in his initial request, be provided.
6. Unfortunately, this email was addressed incorrectly (to an address "@scotand.gov.u", rather than "@scotland.gov.uk"). This appears to have been a result of errors by both Mr Howarth (who omitted the required "k") and the Ministers (who provided the address incorrectly omitting the required "l").
7. Mr Howarth re-sent his request for review to the correct address on 6 July 2010, after noting that the email address to which he had sent it previously was invalid.
8. Despite contacting the Ministers numerous times by email and telephone to seek updates on the progress of his review Mr Howarth did not receive any substantive response to his request for review. On 21 September 2010 he wrote to the Commissioner's Office, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Howarth had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 27 September 2010, the Ministers were notified in writing that an application had been received from Mr Howarth and were invited to comment on the application.
11. The Ministers responded on 13 October 2010 and apologised unreservedly for their handling of both the initial request and the review request, admitting that this had been unsatisfactory.
12. In respect of the initial request the Ministers stated that because information had had to be collated across various teams it had taken longer than anticipated to locate and gather the information.



13. In respect of the review handling, the Ministers stated that a staff move had led to the reviewer's workload increasingly dramatically. The Ministers noted that steps had not been taken to address this situation, e.g. by appointing a different reviewer. They noted that steps were underway to ensure that, in future, reviews are reallocated where necessary to ensure deadlines are met.
14. This letter also indicated that a response to Mr Howarth's request for review was being finalised, and would be issued shortly. The Ministers stated that they would inform the Commissioner as soon as they had sent a response to Mr Howarth. However, having sought updates on progress on 22 October and 26 November 2010, the Commissioner understands that no response had been sent to Mr Howarth by the date of issuing this decision.

Commissioner's analysis and findings

15. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
16. The Ministers provided a response to Mr Howarth's information request of 15 February 2010 on 4 June 2010.
17. The Commissioner therefore finds that the Ministers failed to respond to Mr Howarth's request for information of 15 February 2010 within the 20 working days allowed under section 10(1) of FOISA.
18. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
19. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached.
20. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection 21(4) and a statement of its reasons for so doing.
21. The Ministers did not provide such a response to Mr Howarth's requirement for review of 6 July 2010 within the timescale required by section 21(1).



22. The Commissioner therefore finds that the Ministers failed to respond to Mr Howarth's requirement for review of 6 July 2010 in line with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA.
23. As noted above, the Ministers submissions in this case indicated that a review response was being finalised and that it would be issued to Mr Howarth shortly. However, as the Ministers have yet to comply with the requirement in accordance with section 21 of FOISA and, given the history of delay on the part of the Ministers in this case, the Commissioner considers it necessary to require the Ministers to respond to Mr Howarth's requirement for review by 17 January 2011.

Comments on the Ministers' handling of Mr Howarth's request

24. The Commissioner notes that, since receiving Mr Howarth's requirement for review on 6 July 2010, the Ministers on numerous occasions advised him that the request was being dealt with and that they hoped to provide a response to him shortly.
25. He also notes that after receiving notice of Mr Howarth's application for a decision, the Ministers indicated to him on 13 October 2010 that a response was at that point being finalised for issue to Mr Howarth. Therefore the Commissioner is most unhappy to have to note at the date of this decision, more than four months after Mr Howarth first made his request for review, that a response has still not been issued to him. The Commissioner considers the length of delays exhibited in this case to be wholly unacceptable.
26. Having reviewed the email communications between Mr Howarth and the Ministers with respect to both his request and subsequent request for review, the Commissioner has considerable sympathy with the applicant's frustrations at the Ministers' failure to provide timely responses or any indication of the reasons for delay. He considers that Mr Howarth is justified in feeling aggrieved.
27. The Commissioner would also note that this is not the first case to come before him recently in which he has had occasion to raise with the Ministers the matter of unacceptable delays in responding to an information request. In Decision 180/2010 *Mr Kenny Angove and the Scottish Ministers*, the Commissioner expressed significant concern about the Ministers' failure to provide any response to a request for information, more than a year after it was first made. Given that this case raises similar concerns, the Commissioner would reiterate his comments in that decision, and urge the Ministers to ensure that measures are put in place to ensure that there is no repeat of these failings.
28. The Commissioner would finally note that he is aware that the provision of an incorrect email address for submitting a review within the Ministers' letter to Mr Howarth of 4 June 2010 might well have become an additional cause of delay in this case. While this error could have led to Mr Howarth's attempt to request a review failing, in practice, his own error also contributed to the email he sent on 6 June failing to reach the intended recipient.



29. As this case shows, typographical errors can easily be made, and the Commissioner does not consider the Ministers' error to have been made with any deliberate intention of delaying or preventing any request for review being received. He would however suggest that the Ministers remind staff dealing with requests for information that it is good practice to check the accuracy of any contact information given out in such circumstances.

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

The Commissioner therefore requires the Ministers to conduct a review in relation to Mr Howarth's request (which should be in terms of sections 21(4)(a) or (b) of FOISA) and notify him of the outcome of the review in terms of section 21(5), by 17 January 2011.

Appeal

Should either Mr Howarth or the Ministers wish to appeal against this decision, there is an 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 notice.

**Claire Sigsworth
Deputy Head of Enforcement
29 November 2010**



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- ...
- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...