

Decision Notice



Decision 101/2012 Mr X and the Scottish Qualifications Authority

Failure to respond to request for review

Reference No: 201201015
Decision Date: 26 June 2012

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether the Scottish Qualifications Authority (SQA) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr X.

Background

1. On 9 March 2012, Mr X wrote to the SQA requesting certain specified information.
2. The SQA responded on 2 April 2012, providing some of the requested information, subject to the redaction of names of staff involved, and indicating that it did not hold other information.
3. On 23 April 2012, Mr X wrote to the SQA requesting a review of its decision to withhold staff names within the information supplied, and to provide this information in full.
4. Mr X did not receive a response to his requirement for review and, on 1 June 2012, 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.
5. The application was validated by establishing that Mr X 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

6. On 7 June 2012, the SQA was notified in writing that an application had been received from Mr X and was invited to comment on the application.
7. The SQA responded on 8 June 2012, and its submissions are considered in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

8. 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, subject to certain exceptions which are not relevant in this case.
9. In this case, Mr X submitted a request for review of the SQA's decision to withhold certain information by email on 23 April 2012. Bearing in mind that 7 May 2012 was a Bank Holiday, the SQA was obliged to issue a response to that request for review no later than 22 May 2012.
10. Since the SQA did not provide a response to Mr X's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
11. However, the SQA did contact Mr X by email on 1 June 2012 to notify him of its response to his request for review and advise him that the SQA was going to send him a further copy of the information with some of the withheld information reinstated. The further information was sent to Mr X by mail on 6 June 2012, and was received by him on 8 June 2012.
12. In the circumstances, the Commissioner is satisfied that the SQA has now responded to Mr X's requirement for review, and so she does not require it to take any action in this case in response to Mr X's application.

DECISION

The Commissioner finds that the Scottish Qualifications Authority (the SQA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr X, in particular by failing to respond to Mr X's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the SQA has now responded to Mr X's requirement for review, the Commissioner does not require the SQA to take any action in response to this failure.

Appeal

Should either Mr X or the Scottish Qualifications Authority 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.



Margaret Keyse
Head of Enforcement
26 June 2012



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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish 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.

...