

Decision Notice



Decision 170/2013 Mr Andrew Picken and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201301612
Decision Date: 9 August 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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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 Andrew Picken (Mr Picken).

Background

1. On 13 April 2013, Mr Picken wrote to the Ministers requesting certain specified information.
2. Mr Picken received no response to his request for information.
3. On 28 May 2013, Mr Picken wrote to the Ministers requesting a review in respect of their failure to respond.
4. Mr Picken did not receive a response to his requirement for review and on 13 July 2013 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 Picken 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 18 July 2013, the Ministers were notified in writing that an application had been received from Mr Picken and invited to comment on the application.
7. The Ministers responded on 1 August 2013, commenting that they were unable to make the submission deadline, but accepting that the information had not yet been disclosed to Mr Picken.



Commissioner's analysis and findings

8. 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, subject to certain exceptions which are not relevant in this case.
9. Since the Ministers did not provide a response to Mr Picken's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
10. 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.
11. Since the Ministers did not provide a response to Mr Picken's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
12. 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: she now requires a review to be carried out in accordance with them.

DECISION

The Commissioner finds that 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 Picken, in particular by failing to respond to Mr Picken'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 undertake a review in respect of Mr Picken's request for information, in line with the requirements of section 21 of FOISA, after the date of intimation of this decision notice that is by **23 September 2013**.



Appeal

Should either Mr Picken 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.

Margaret Keyse
Head of Enforcement
9 August 2013



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 Scottish 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

...

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.

...