

# Decision Notice



Decision 069/2014 Shetland Line (1984) Limited and Transport Scotland

Procurement of Northern Isles ferry services: failure to respond within statutory timescales

Reference No: 201400324  
Decision Date: 20 March 2014

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

On 17 October 2013, Shetland Line (1984) Limited asked Transport Scotland for information about the procurement of Northern Isles ferry services. This decision finds that Transport Scotland failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that Transport Scotland failed to comply with Shetland Line (1984) Limited's requirement for review within the timescale set down by FOISA.

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

## Background

Date	Action
17 October 2013	Maclay Murray & Spens LLP, on behalf of Shetland Line (1984) Limited, made an information request to Transport Scotland.
15 November 2013	Although Shetland Line (1984) Limited was sent an acknowledgement, it did not receive a response to the request.
19 December 2013	Shetland Line (1984) Limited wrote to Transport Scotland requiring a review in respect of the authority's failure to respond.
22 January 2014	Again, although Shetland Line (1984) Limited received an acknowledgement to its requirement for review, it did not receive a response to the requirement.
11 February 2014	Shetland Line (1984) Limited wrote to the Commissioner's Office, stating that it was dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
26 February 2014	Transport Scotland was notified in writing that an application had been received from Shetland Line (1984) Limited and was invited to comment on the application.
12 March 2014	The Commissioner received submissions from the Scottish Ministers, on behalf of Transport Scotland. These submissions are considered below.



## Commissioner's analysis and findings

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1. Transport Scotland acknowledged that it had not responded to Shetland Line (1984) Limited's request or requirement for review within the statutory timescales. It explained the delay was due to the volume of information relating to this request, confirming that it aimed to respond as soon as possible.
2. Transport Scotland had not responded to Shetland Line (1984) Limited by the time of this decision.
3. 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
4. It is a matter of fact that Transport Scotland did not provide a response to Shetland Line (1984) Limited's request for information within 20 working days, so the Commissioner finds that the authority failed to comply with section 10(1) of FOISA.
5. 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.
6. It is a matter of fact that Transport Scotland did not provide a response to Shetland Line (1984) Limited's requirement for review within 20 working days, so the Commissioner finds that the authority failed to comply with section 21(1) of FOISA.
7. 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 Transport Scotland failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

## DECISION

The Commissioner finds that Transport Scotland failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Shetland Line (1984) Limited. In particular, the authority failed to respond to Shetland Line (1984) Limited's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner therefore requires Transport Scotland to provide Shetland Line (1984) Limited with a response to its requirement for review, by **5 May 2014**.



## Appeal

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Should either Shetland Line (1984) Limited or Transport Scotland 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**20 March 2014**