



Scottish Information  
Commissioner

**Decision 048/2008 - Mr Matthew Clark and the Scottish  
Ministers**

*Failure to respond to request for review*

**Applicant: Mr Matthew Clark  
Authority: Scottish Ministers  
Case No: 200800251  
Decision Date: 31 March 2008**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 048/2008 – Mr Matthew Clark and the Scottish Ministers

### ***Failure of the Scottish Ministers to respond to a request for a review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002 (FOISA)***

#### **Facts**

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1. On 23 October 2007, Mr Clark submitted an information request to the Scottish Ministers (the Ministers) for the following information:

*Full details of meetings attended by Ministers with officials and by Ministers with external organisations – or letters or emails sent or received between the same – to discuss the size, condition and capacity of Scotland's school estate since the announcement by the Scottish Government on 12 July 2007. Details requested are for the agendas, minutes, supporting factual briefing papers and documents, notes of the outcomes of the meetings, together with attendance lists for each meeting.*

2. Mr Clark was provided with a response to this request on 16 November 2007. In this response, the Ministers explained that they were not willing to disclose the requested information to Mr Clark as they considered that the exemptions in sections 29(1)(a) and 30(b)(i) and (ii) of FOISA were engaged.
3. On 23 November 2007, Mr Clark submitted a request for a review to the Ministers, in which he disputed that all of the information requested fell under the exemptions quoted, and stated that he required factual information, at least, in response to his request.
4. The Ministers responded to Mr Clark on 11 December 2007 and requested that he clarify the terms of his request for review.
5. Mr Clark provided the Ministers with clarification on 12 December 2007. On 20 December 2007, the Ministers responded to Mr Clark again requesting further clarification of his request for review.
6. On the same day, Mr Clark responded to the Ministers providing further clarification.
7. Mr Clark received no response to his request for review and on 20 February 2008 applied to the Scottish Information Commissioner in terms of section 47(1) of FOISA, requesting that he investigate this failure.



8. The Commissioner notified the Ministers of the application made by Mr Clark and invited their comments (all in terms of section 49(3)(a) of FOISA) on 26 February 2008. The Ministers responded on 11 March 2008 with comments on the application. The Ministers explained that they had no record of receiving Mr Clark's final email to the Ministers dated 20 December 2007, and so had not responded to it. The Ministers accepted that in wishing to provide Mr Clark with as much advice and assistance as possible, their handling of Mr Clark's request had perhaps become overly protracted.
9. Following their response to the Commissioner's Office, the Ministers wrote to Mr Clark, providing a full response to his request for review on 27 March 2008.
10. Under section 49(1) of FOISA, except where the application is frivolous or vexatious, or where the application has been withdrawn or abandoned, the Commissioner must arrive at a decision in respect of any application made to him under section 47(1) of FOISA (that is, as to whether the applicant's request for information has been dealt with in accordance with Part 1 of FOISA) and must issue a decision notice to both the applicant and the public authority.
11. The Commissioner is satisfied that Mr Clark made a request for information to the Ministers on 23 October 2007, which was valid in terms of section 1(1) of FOISA and which the Ministers responded to within the timescale of 20 working days allowed by section 10(1) of FOISA.
12. Following the Ministers' response to his information request, Mr Clark submitted a valid requirement for review (in terms of section 20 of FOISA) on 23 November 2007. While subsequent communications may in fact have made matters less clear, I believe that this letter set out clearly why Mr Clark was dissatisfied with the Ministers initial response to his request. It accepted that certain information falling within the scope of the request might legitimately be exempt but argued that the remaining (factual) information was not. On the face of it, I do not believe that the requirement for review went beyond the scope of the initial request.
13. In any event, FOISA does not allow a public authority to delay responding to a requirement for review in order to seek clarification or additional information from an applicant. Thus, regardless of whether the Ministers considered they required clarification from Mr Clark in order to carry out a review, they were obliged (in terms of section 21(1) of FOISA) to carry out the review within 20 working days from receipt of the requirement.
14. The Ministers did not respond to Mr Clark's requirement for a review within the timescale laid down in section 21(1) of FOISA. However, the Commissioner notes that a full response has been provided to Mr Clark's request for review in the meantime.



## **Decision**

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The Commissioner finds that the Scottish Ministers (the Ministers) did not deal with Mr Clark's request for information in accordance with the requirements of Part 1 of FOISA in that they failed to comply with section 21(1).

As the Ministers have now responded in full to Mr Clark's request for review, the Commissioner does not require the Ministers to take any further action on this occasion.

## **Appeal**

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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 the intimation of this notice.

**Euan McCulloch**  
**Deputy Head of Investigations**  
**31 March 2008**