

Decision Notice



Decision 258/2013 Mr Derek Cooney and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201302467

Decision Date: 19 November 2013

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Rosemary Agnew

Scottish Information Commissioner

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



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 the information request made by Mr Cooney.

Background

1. On 20 August 2013, Mr Cooney faxed the Ministers a request for certain specified information.
2. Mr Cooney received no response to his request for information.
3. On 23 September 2013, Mr Cooney faxed the Ministers to request a review of their failure to respond.
4. Mr Cooney did not receive a response to his requirement for review and, on 23 October 2013, wrote to the Commissioner, 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 Cooney 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 31 October 2013, the Ministers were notified in writing that an application had been received from Mr Cooney and were invited to comment on the application.
7. The Ministers responded on 14 November 2013 by providing a copy of a review response sent to Mr Cooney on 13 November 2013. The Ministers stated that they had not received Mr Cooney's request or request for review.
8. The investigating officer spoke to Mr Cooney, who provided the fax number he had used when making his request and request for review to the Ministers.



Commissioner's analysis and findings

9. In their letter to Mr Cooney of 13 November 2013, the Ministers apologised for not responding to his request and request for review, and stated that they had not received these letters.
10. 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.
11. As noted above, the Ministers stated that they did not receive the request letter, whilst Mr Cooney stated that he had faxed his request letter to the Ministers. The investigating officer confirmed that Mr Cooney had used the correct fax number to fax his request. Therefore, on the balance of probabilities, the Commissioner accepts that Mr Cooney's request was received by the Ministers on the day it was sent, and has therefore concluded that the Ministers did not provide a response to Mr Cooney's request for information within 20 working days, and that they failed to comply with section 10(1) of FOISA.
12. 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.
13. As noted above, the Ministers stated that they did not receive the request for review, whilst Mr Cooney confirmed that he had faxed his request for review to the Ministers. The investigating officer confirmed that Mr Cooney had used the correct fax number to fax his request for review. Therefore, on the balance of probabilities, the Commissioner accepts that Ministers received Mr Cooney's request for review on the day it was sent. The Commissioner finds that the Ministers did not provide a response to Mr Cooney's requirement for review within 20 working days, and that they failed to comply with section 21(1) of FOISA.
14. Given that the Ministers have now responded to Mr Cooney's requirement for review, the Commissioner does not require them to take any further action in this case.

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 Cooney, in particular by failing to respond to his request and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr Cooney's requirement for review, the Commissioner does not require them to take any further action.

Decision 258/2013
Mr Derek Cooney
and the Scottish Ministers



Appeal

Should either Mr Cooney 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.

Alison Davies
Deputy Head of Enforcement
19 November 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

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