



Scottish Information
Commissioner

**Decision 043/2008 - Mr Matthew Clark and the Scottish
Ministers**

Responses to a letter from the First Minister regarding observer
status at United Nations meetings

Applicant: Mr Matthew Clark
Authority: Scottish Ministers
Case No: 200800252
Decision Date: 26 March 2008

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 043/2008 – Mr Matthew Clark and the Scottish Ministers

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

Facts

1. On 31 October 2007, Mr Clark submitted an information request to the Scottish Ministers (the Ministers) for the following information:

Copies of the replies from foreign governments in response to the First Minister's recent letter to them concerning observer status at United Nations meetings. I would be grateful for this to be considered an ongoing request and would like to receive copies of replies that are received in the future as well as replies currently held by the Scottish Government.
2. Mr Clark was provided with a response to this request on 6 December 2007. In this response, the Ministers explained that they were not willing to disclose the requested information to Mr Clark as they considered that an exemption in section 30 of FOISA applied to the information.
3. On 20 December 2007, Mr Clark submitted a request for a review to the Ministers, in which he asked that they review their decision not to release the requested information to him.
4. Mr Clark received no response to his request for review and on 20 February 2008 applied to the Scottish Information Commissioner, requesting that he investigate this failure.
5. 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 20 March 2008, accepting that they had not responded to Mr Clark's request for a review. The Ministers offered their unreserved apologies for this failure and stated that it was due to staff absence in the Permanent Secretary's office which had delayed the identification of a reviewer (the usual reviewer in that office being unexpectedly absent on business).



6. The Ministers explained that all staff were fully aware of the requirements of FOISA and in particular the responsibility to ensure that responses were issued in accordance with the requisite timescales. The Ministers also advised that given their failure to provide a timely response in this case, consideration was being given to identifying whether improvements might be made to their tracking systems with a view to flagging up at an earlier stage circumstances likely to lead to delay.
7. The Ministers explained that a review into Mr Clark's case was proceeding and that they would issue a response to Mr Clark as soon as possible.
8. 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.
9. The Commissioner is satisfied that Mr Clark made a request for information to the Ministers on 31 October 2007 which was valid in terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 20 December 2007.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to exceptions which do not apply in this case.
11. The Ministers did not respond to Mr Clark's request for information within the timescale laid down in section 10(1) of FOISA.
12. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
13. The Ministers did not respond to Mr Clark's requirement for a review within the timescale laid down in section 21(1) of FOISA, and indeed still have not done so. The Commissioner notes their stated intention to carry out a review and also to review their systems in the light of this failure. Wherever practicable, it would appear advisable for a Scottish public authority to have in place permanent arrangements for dealing with situations where a designated reviewer is absent or otherwise unable to act (or indeed where it would be inappropriate for whatever reason for that reviewer to do so).



Decision

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 sections 10(1) and 21(1).

The Commissioner requires the Ministers to respond to Mr Clark's request for review in terms of section 21 of FOISA, within 45 days after the date of the intimation of this decision notice.

Appeal

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
26 March 2008