

Decision Notice



Decision 038/2013 Mr Andrew Picken of the Mail on Sunday and the Scottish Ministers

Failure to respond to a request and a requirement for review

Reference No: 201300413
Decision Date: 07 March 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 an information request made by Mr Picken.

Background

1. On 10 November 2012, Mr Picken wrote to the Ministers requesting certain specified information.
2. Mr Picken did not receive a response to his request for information.
3. On 22 December 2012, Mr Picken wrote to the Ministers, seeking a review in respect of their failure to respond.
4. With the exception of an acknowledgement, Mr Picken received no response to his requirement for review and, on 6 February 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 8 February 2013, the Ministers were notified in writing that an application had been received from Mr Picken and were invited to comment on the application.
7. The Ministers responded on 4 March 2013, explaining that the technical appeal in relation to this request and requirement for review from Mr Picken was still on-going. They were unable to say when a response would be provided to him.



8. The Ministers did not provide any submissions which explained why they had been unable to respond to Mr Picken's request and requirement for review within the timescales prescribed in FOISA.

Commissioner's analysis and findings

9. 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.
10. 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.
11. 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.
12. 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. Given the time which has elapsed since the requirement for review, she views with some concern the Ministers' inability to confirm compliance, or a projected date for compliance, at the time of this decision.
13. The Commissioner now requires the Ministers to respond to Mr Picken's requirement for review, in accordance with section 21 of FOISA, by 22 April 2013.

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 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 provide a response to Mr Picken's requirement for review, in accordance with section 21 of FOISA, by 22 April 2013.

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Mr Andrew Picken
and Scottish Ministers



Appeal

Should either Mr Picken or the Scottish Ministers wish to appeal against this decision, there is an 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 notice.

Euan McCulloch
Deputy Head of Enforcement
07 March 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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