

# Decision Notice

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## Decision 041/2018: Mr Y and the Scottish Ministers

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**The basis for an assertion: failure to respond within statutory timescales**

Reference No: 201800168

Decision Date: 19 March 2018



Scottish Information  
Commissioner

## Summary

The Scottish Ministers (the Ministers) were asked for the evidence upon which the Cabinet Secretary for Justice “founds his claim the threats levelled against me [the requester] are a matter of allegation as opposed to fact.” This decision finds that the Ministers failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner has ordered the Ministers to comply with the requirement for review.

## Background

| Date                            | Action  |
|---------------------------------|---|
| 2 October 2017                  | Mr Y made an information request to the Ministers.  |
| 20 October 2017                 | The Ministers responded to the information request.   |
| 23 October and 11 December 2017 | Mr Y wrote to the Ministers requiring a review of their decision.   |
|                                 | Mr Y did not receive a response to his requirement for review.  |
| 23 January 2018                 | Mr Y wrote to the Commissioner’s Office, stating that he was dissatisfied with the Ministers’ failure to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 26 February 2018                | The Ministers were notified in writing that an application had been received from Mr Y and were invited to comment on the application.  |
| 13 March 2018                   | The Commissioner received submissions from the Ministers.   |

## Commissioner’s analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the Ministers did not provide a response to Mr Y’s requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
3. 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 the Ministers failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.

## Decision

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The Commissioner finds that the Scottish Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Y. In particular, they failed to respond to Mr Y's requirement for review within the timescales laid down by section 21(1) of FOISA.

The Commissioner therefore requires the Ministers to provide a response to Mr Y's requirement for review by **3 May 2018**.

## Appeal

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Should either Mr Y 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.

## Enforcement

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If the Scottish Ministers fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Scottish Ministers have failed to comply. The Court has the right to inquire into the matter and may deal with the Scottish Ministers as if they had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**19 March 2018**

**Scottish Information Commissioner**

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