



Scottish Information
Commissioner

**Decision 015/2007 – Mr M and the Scottish
Executive**

*Request for copies of notes taken during a meeting with the
applicant*

**Applicant: Mr M
Authority: The Scottish Executive
Case No: 200601939
Decision Date: 29 January 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 015/2007 – Mr M and the Scottish Executive

Failure of the Scottish Executive to respond to a request for review in relation to a request for copies of notes taken during a meeting with the applicant

Facts

Mr M had previously contacted the Scottish Executive (the Executive) to request copies of notes taken during a meeting he attended in 2003 to discuss the resolution of an ongoing complaint. When the Executive failed to respond to Mr M's correspondence, he submitted an application to the Commissioner.

This application was considered in Decision 164/2006, in which the Commissioner required the Executive to respond to Mr M's request for information.

Following receipt of the Executive's response, Mr M contacted the Executive to request that it review its handling of his information request. When no response was received to this request for review, Mr M again made an application to the Commissioner in relation to this case.

The Commissioner found that the Executive had again failed with regard to the Freedom of Information (Scotland) Act 2002 (FOISA), in failing to respond to Mr M's request for review. The Commissioner required the Executive to issue Mr M with an appropriate response.

Background

1. On 23 March 2006, Mr M contacted the Executive to request copies of notes taken at a meeting held in June 2003 between the Executive and Mr M.
2. When no response was received to this correspondence within 20 working days, Mr M wrote to the Executive to request that it review its handling of his information request.



3. When no response was again received, Mr M made an application to the Commissioner. Following investigation, the Commissioner found that the Executive had failed with regard to FOISA, in failing to respond to Mr M's information request. The Commissioner required that the Executive issue Mr M with an appropriate response.
4. This response was subsequently issued by the Executive on 20 October 2006. In this response, the Executive informed Mr M that the requested notes were not held by it, and that its response therefore should be considered to be a notice under section 17 of FOISA (Notice that information is not held).
5. Mr M submitted a request for review on 26 October 2006. When no response was again received to this correspondence, Mr M submitted an application for decision to the Commissioner. This application was received by the Commissioner on 29 November 2006.

The Commissioner's Analysis and Findings

6. The Executive has stated, in its submissions to the Commissioner in relation to this case, that it did not consider that Mr M's request to be a request for review under section 20 of FOISA. In support of this, the Executive refers to a paragraph in Mr M's correspondence on 26 October in which he indicates that his intention is not specifically to seek access to the notes in question, which he accepts may have been destroyed.
7. However, following a review of Mr M's correspondence of 26 October, it is clearly the case that the paragraph referred to by the Executive should be considered within the context of the surrounding 17 paragraphs of that letter. While it is indeed the case that Mr M indicates in the single paragraph referred to by the Executive that he is not seeking access to the notes in question, he specifically and repeatedly asserts elsewhere in this correspondence that his intention in submitting the correspondence is to seek a review of the Executive's handling of his FOISA request.
8. Mr M also goes on to request, under point 1 of paragraph 15 of his correspondence, that the Executive "*confirm that these original 'notes'... have not survived the past three years, and have indeed been destroyed*".



9. Further evidence in support of the validity of Mr M's request for review includes the fact that it was both directly addressed to the named individual to whom the Executive had informed Mr M that such a request for review should be sent, and was explicitly headed "FOISA INTERNAL REVIEW REQUEST".
10. Had the Executive been unsure of Mr M's intention in submitting the above correspondence, or indeed of the nature and scope of Mr M's dissatisfaction, it would have been appropriate (under the duty to advise and assist set out in section 15 of FOISA) to contact Mr M to seek further clarification and discuss with him the potential scope of any such review. The Executive did not choose to do this, however, and subsequently failed to respond to Mr M.
11. Section 21(1) of FOISA requires authorities to respond to the requests for review they receive within 20 working days of receipt. In failing to do so, the Executive failed to comply with section 21(1) of FOISA in dealing with Mr M's request for review.

Decision

The Commissioner finds that the Scottish Executive (the Executive) failed to deal with Mr M's request for information in accordance with Part 1 of FOISA, in that it failed to comply with section 21(1) in dealing with his request.

The Commissioner requires the Executive to respond to Mr M's request for review by undertaking a review which addresses the dissatisfaction set out under point 1 of paragraph 15 of Mr M's request for review of 26 October 2006 (and summarised under paragraph 8 above).

The Commissioner requires the Executive to respond to Mr M within two months of receipt of this 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 such appeal must be made within 42 days of receipt of this notice.

Margaret Keyse
Head of Investigations
29 January 2006