

Decision Notice 207/2021

Coronavirus outbreak February 2020 – failure to respond

The Applicant

Public authority: Scottish Ministers

Case Ref: 202100682



Scottish Information
Commissioner

Summary

The Applicant asked the Ministers for communications concerning the outbreak of Coronavirus at the Edinburgh Hilton Carlton Hotel in February 2020. This decision finds that the Ministers failed to respond to the request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also recognises significant failures in handling by the Ministers which have been noted as part of the Commissioner's ongoing intervention.

Background

1. The Applicant made an information request to the Ministers on 12 May 2020.
2. The Ministers did not respond to the information request.
3. On 27 July 2020, the Applicant wrote to the Ministers in respect of their failure to respond.
4. The Applicant received an update from the Ministers on 27 July 2020, informing him that the request had been allocated to a case officer and had been delayed due to limited capacity and volume of requests received due to the circumstances. No timescale for response was provided. No review rights were provided to the Applicant.
5. On 10 September 2020, the Applicant requested an update from the Ministers on a timeline for response.
6. On 30 September 2020, the Applicant informed the Ministers he intended to apply to the Scottish Information Commissioner and requesting an update on estimated timescale for response.
7. On the same day, the Ministers apologised that the email had been overlooked due to leave and confirmed that the response had been drafted and passed for review.
8. On 6 November 2020, the Applicant sought a further update.
9. The Ministers responded that the response was going through the clearance process.
10. On 25 November 2020, the Applicant sought a formal review of the Ministers' failure to comply with FOI legislation in regard to the request. No appeal rights were provided to the Applicant.
11. On 3 December 2020, the Ministers further apologised for the failure to respond and stated that a review response would be provided by 24 December 2020.
12. On 21 December 2020, the Ministers contacted the Applicant, stating they would not be able to comply with the deadline for response as the response was still going through the clearance process.
13. On 27 April 2021, the Applicant highlighted to the Ministers that 11 months had passed since submission of the original request and that if no response was provided by 28 April 2021, he would pass the case to the Commissioner.
14. On 28 April 2021, the Ministers notified the Applicant that it would not be able to meet the deadline given by the Applicant and that a response would be sent out as soon as possible and acknowledged that the requester may now wish to approach the Commissioner.

15. On 28 May 2021, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Ministers' failure to respond after a full year, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
16. On 8 July 2021, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
17. The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

18. 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. This is subject to qualifications which are not relevant in this case.
19. The Ministers explained that the request was received near the start of the Covid 19 pandemic when the Scottish Government was putting in place the organisational structures to deal with the pandemic while also dealing with an exceptional volume of correspondence covering complex and often multiple issues which led to the significant delays in allocating the request to a relevant case handler.
20. Searches identified a large volume of information requiring consideration and review and significant contributions across several areas of the government which took a considerable time to co-ordinate and was hindered by a lack of available resource.
21. It is a matter of fact that the Ministers did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA .
22. 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. Again, this is subject to qualifications which are not relevant in this case.
23. The Ministers stated that the applicant was provided with updates on the progress and apologising for the delays in responding. The Ministers stated that they did not recognise the Applicant's email of 27 July 2020 as a request for review but rather a request for an update.
24. During the investigation, the Ministers acknowledged that as the email clearly expressed dissatisfaction with the lateness of the response it should have been treated as a request for review.
25. It is a matter of fact that the Ministers did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
26. The Ministers eventually responded to the Applicant's requirement for review on 4 June 2021, apologising for the considerable delay and accepting that responses were not provided within the timescales allowed. The Commissioner notes that, while the Ministers have not sought to rely on the Coronavirus (Scotland) Act 2020 provisions in this case, they have stated that part of the reasoning for the failure to respond was as a result of the impact of the Covid 19 pandemic. However, the Commissioner would have been unlikely to have accepted that the delays in this case could have been justified given the length of the delays in this case.

27. The Commissioner has recorded the significant failures arising in this case and noted them as part of his ongoing intervention into the Ministers handling of requests.
28. The Ministers have confirmed that they failed to adhere to the timelines set out in the legislation or to provide the Applicant with his right to review or appeal. The Ministers have since responded to the Applicant's requirement for a review, and have also reviewed their resourcing position and have restructured to improve their handling of requests, which included providing training for responders. As such, the Commissioner does not require them to take any further action in relation to the Applicant's application.

Decision

The Commissioner finds that the Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, the Ministers failed to respond to the Applicant's request for information or requirement for review within the timescales laid down by sections 10(1) of 21(1) of FOISA.

Although the Commissioner does not require the Ministers to take any action in respect of these significant failures in response to the Applicant's application, given that a response was provided in June 2021, he will take into account the handling of this case in his ongoing intervention with the Ministers.

Appeal

Should either the Applicant or the 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.

Daren Fitzhenry
Scottish Information Commissioner
23 December 2021

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