

Decision Notice

Decision 004/2017: Mr Hunter and the Scottish Ministers

Correspondence on PM's visit: failure to respond within statutory timescales

Reference No: 201602187

Decision Date: 12 January 2017



Scottish Information
Commissioner

Summary

The Scottish Ministers (the Ministers) were asked for information about Prime Minister Theresa May's visit to meet First Minister Nicola Sturgeon on 15 July 2016. This decision finds that the Ministers failed to respond to the request and the requirement for review within the timescales set by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
16 September 2016	Mr Hunter made an information request by email to the Ministers.
	The Ministers did not respond to the information request.
18 October 2016	Mr Hunter emailed the Ministers, seeking a review in respect of their failure to respond.
	Mr Hunter did not receive a response to his requirement for review.
30 November 2016	Mr Hunter wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
20 December 2016	The Ministers were notified in writing that an application had been received from Mr Hunter and were invited to comment on the application.
10 January 2017	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. The Ministers stated that an undated copy of a response was held on computer. They believed this response had been posted in early November, as the official concerned recalled, although it would have been usual to respond to an emailed request by email. The Ministers confirmed there was no record of sending a response by email, or of one being posted. They also confirmed sending Mr Hunter a further response on 10 January 2017.
2. In all the circumstances narrated above, the Commissioner is unable to conclude, on the balance of probabilities, that a response was sent to Mr Hunter prior to 10 January 2017.
3. 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.
4. It is a matter of fact that the Ministers did not provide a response to Mr Hunter's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.

5. 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.
6. It is a matter of fact that the Ministers did not provide a response to Mr Hunter's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
7. As the Ministers responded to Mr Hunter's requirement for review on 10 January 2017, the Commissioner does not require them to take any further action in relation to Mr Hunter's application.
8. The Commissioner notes that the Ministers have apologised to Mr Hunter for their failure to comply.

Decision

The Commissioner finds that the Scottish 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 Hunter. In particular, they failed to respond to Mr Hunter'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 does not require the Ministers to take any action in respect of these failures, in response to Mr Hunter's application, given that a response was issued on 10 January 2017.

Appeal

Should either Mr Hunter 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.

Euan McCulloch
Deputy Head of Enforcement

12 January 2017

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