

Decision Notice 009/2021

First Minister's Meeting with Geoff Aberdein (29 March 2018) – failure to respond

The Applicant

Public authority: Scottish Ministers

Case Ref: 202001447



Scottish Information
Commissioner

Summary

The Applicant asked the Scottish Ministers (the Ministers) for information about an alleged meeting between the First Minister and Geoff Aberdein on 29 March 2018. This decision finds that the Ministers failed to respond to the Applicant's requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Ministers on 19 September 2020.
2. The Ministers responded to the information request on 8 October 2020.
3. On 13 October 2020, the Applicant wrote to the Ministers requiring a review of their decision.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 4 December 2020, stating that he was dissatisfied with the Ministers' failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 8 December 2020, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
7. The Commissioner received submissions from the Ministers on 18 December 2020. These submissions are considered below.

Commissioner's analysis and findings

8. 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.
9. 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.
10. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
11. The Ministers responded to the Applicant's requirement for review on 15 December 2020, including an apology for the late response, so the Commissioner does not require them to take any further action in relation to the Applicant's application.

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 the Applicant. In particular, the Ministers failed to respond to the Applicant's requirement for review within the timescales laid down by section 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of this failure in response to the Applicant's application, given that a review was issued on 15 December 2020.

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.

Enforcement

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

Euan McCulloch
Deputy Head of Enforcement

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