

# Decision Notice



Decision 023/2013 Mr Paul Hutcheon and the Scottish Ministers

Failure to comply with required timescales

Reference No: 201300272

Decision Date: 20 February 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

This decision considers whether the Scottish Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr Hutcheon.

## Background

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1. On 31 October 2012, Mr Hutcheon wrote to the Ministers requesting certain specified information.
2. Mr Hutcheon received no response to his request for information.
3. On 1 December 2012, Mr Hutcheon wrote to the Ministers requesting a review in respect of their failure to respond.
4. Mr Hutcheon did not receive a response to his requirement for review and, on 19 January 2013, wrote to the Commissioner, stating that he was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Mr Hutcheon had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its failure to respond to that request. The case was then allocated to an investigating officer.

## Investigation

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6. On 29 January 2013, the Ministers were notified in writing that an application had been received from Mr Hutcheon and were invited to comment on the application, as required by section 49(3)(a) of FOISA.
7. The Ministers responded on 19 February 2013, expressing regret that there had been a delay in responding to Mr Hutcheon's request for information. They explained that for various reasons it was taking the policy officials longer than expected to finalise a response to Mr Hutcheon's requirement for review. While the Ministers indicated that a response would be provided as soon as possible, a definite date was not provided.



## Commissioner's analysis and findings

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8. 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, subject to certain exceptions which are not relevant in this case.
9. Since the Ministers did not provide a response to Mr Hutcheon's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
10. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant to this case.
11. Since the Ministers did not provide a response to Mr Hutcheon's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
12. While the Commissioner notes the Ministers' intention to provide a response to Mr Hutcheon's requirement for review as soon as possible (an intention which she hopes the Ministers will fulfill), she requires the Ministers to respond to the requirement for review, in accordance with section 21 of FOISA, by 8 April 2013.

## 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 Mr Hutcheon, by failing to respond to his request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA respectively.

The Commissioner therefore requires the Ministers to comply with Mr Hutcheon's requirement for review, in accordance with the requirements of section 21 of FOISA, by 8 April 2013.

Decision 023/2013  
Mr Paul Hutcheon  
and the Scottish Ministers



## Appeal

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Should either Mr Hutcheon or the Scottish Ministers wish to appeal against 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 after the date of intimation of this decision notice.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**20 February 2013**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
  - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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