

Decision Notice



Decision 044/2012 Mr X and the Scottish Qualifications Authority

Failure to comply with required timescale

Reference No: 201200193
Decision Date: 08 March 2012

www.itspublicknowledge.info

Margaret Keyse

Acting Scottish Information Commissioner

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



Summary

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

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 22 November 2011, Mr X emailed the SQA requesting certain specified information.
2. The SQA responded on 6 December 2011, providing an answer to certain parts of Mr X’s request.
3. Also on 6 December 2011, Mr X emailed the SQA requesting a review of its decision.
4. Mr X did not receive a response to his requirement for review and on 26 January 2012 emailed 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 X 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 response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 22 February 2012, the SQA was notified in writing that an application had been received from Mr X and was invited to comment on the application.
7. The SQA responded on 7 March 2012 acknowledging that it had failed to respond to Mr X’s requirement for review within the timescales laid down in FOISA.



8. The SQA stated that it had subsequently introduced measures to prevent a recurrence of this situation in future by putting in place systems to improve the tracking of responses to requests for information, arranging for targeted refresher training on FOISA and revising its policy for dealing with information requests.
9. The SQA confirmed that it had now conducted a review and had advised Mr X of the outcome of that review on 7 March 2012. The SQA provided the Commissioner with a copy of its review response.

Commissioner's analysis and findings

10. 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, subject to certain exceptions which are not relevant in this case.
11. Since the SQA did not provide a response to Mr X's requirement for review within 20 working days of it receiving this, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
12. Given that the SQA did provide a response to Mr X's requirement for review, albeit outwith the 20 working day timescale, the Commissioner does not require it to take any further action in this case, in response to Mr X's application.
13. The Commissioner does however welcome the steps that the SQA intends to take to ensure that no similar breach occurs in future.

DECISION

The Commissioner finds that the Scottish Qualifications Authority (the SQA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr X, in particular by failing to respond to Mr X's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the SQA did provide a response to Mr X's requirement for review, the Commissioner does not require the SQA to take any action in response to this failure.



Appeal

Should either Mr X or the Scottish Qualifications Authority 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.

Claire Sigsworth
Deputy Head of Enforcement
08 March 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...