

# Decision Notice



Decision 072/2013 Mr X and the Scottish Ministers

Compliance with timescales

Reference No: 201300894  
Decision Date: 19 April 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## 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 information request made by Mr X.

## Background

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1. On 22 January 2013, Mr X wrote to the Ministers requesting certain specified information. His request was received on the same day, 22 January 2013.
2. The Ministers responded on 22 February 2013.
3. On 28 February 2013, Mr X wrote to the Ministers requesting a review of their decision.
4. Mr X did not receive a response to his requirement for review and on 3 April 2013 wrote to the Commissioner's Office, 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. On 4 April 2013, the Ministers notified Mr X of the outcome of their review.
6. Mr X subsequently contacted the Commissioner's Office stating that although he had received a response to his requirement for review, he still wished the Commissioner to investigate the Ministers' failure to comply timeously with his request for information and requirement for review.
7. 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

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8. On 17 April 2013, the Ministers were notified in writing that an application had been received from Mr X and were invited to comment on the application.



9. The Ministers responded to the investigating officer also on 17 April 2013. Their comments are considered in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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10. The Ministers apologised for the slight delay in responding to Mr X in this case. Given that they had already responded to his requirement for review, they did not wish to provide any further comments to the Commissioner.
11. 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.
12. Since the Ministers did not provide a response to Mr X's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
13. 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.
14. Since the Ministers did not provide a response to Mr X's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
15. Given that the Ministers have now responded to Mr X's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr X'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 Mr X, in particular by failing to respond to Mr X's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Mr X's requirement for review, the Commissioner does not require the Ministers to take any action in response to this failure.

Decision 072/2013  
Mr X  
and the Scottish Ministers



## Appeal

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Should either Mr X 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.

**Alison Davies**  
**Deputy Head of Enforcement**  
**19 April 2013**



## Appendix

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### Relevant statutory provisions

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

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

##### 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;
- ...

##### 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.
- ...