

# Decision Notice

---

## **Decision 108/2014 Mr William Stewart and the Scottish Criminal Cases Review Commission**

---

**Information about application: failure to respond within statutory timescales**

Reference No: 201400609

Decision Date: 15 May 2014



Scottish Information  
Commissioner

## Summary

On 17 January 2014, Mr Stewart asked the Scottish Criminal Cases Review Commission (the SCCRC) for information about an application he had made to the SCCRC. The decision finds that the SCCRC failed to comply with Mr Stewart's requirement for review within the timescale set down by FOISA. Given that the SCCRC has now responded to Mr Stewart's requirement for review, she does not require the SCCRC to take any action.

## Background

| Date             | Action                                                                                                                                                                                |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 17 January 2014  | Mr Stewart made an information request to the SCCRC.                                                                                                                                  |
| 22 January 2014  | The SCCRC responded to the information request.                                                                                                                                       |
| 10 February 2014 | Mr Stewart sent a fax to the SCCRC requiring a review of its decision.                                                                                                                |
|                  | Mr Stewart did not receive a response to his requirement for review.                                                                                                                  |
| 18 March 2014    | Mr Stewart 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. |
| 8 April 2014     | The SCCRC was notified in writing that an application had been received from Mr Stewart and was invited to comment on the application.                                                |
| 17 April 2014    | The Commissioner received submissions from the SCCRC. These submissions are considered below.                                                                                         |

## Commissioner's analysis and findings

1. 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.
2. In its submissions, the SCCRC informed the Commissioner that it had no record of having received Mr Stewart's requirement for review of 10 February 2014
3. The SCCRC explained that it had checked its mail log and files relating specifically to Mr Stewart. It believed it would have responded to the review requirement had it been received. However, it acknowledged that its fax machine did not enable it to check whether it received a particular fax on a particular date.
4. Mr Stewart provided the Commissioner with a fax transmission activity report to show that he had sent a fax to the SCCRC, using the correct number, on 10 February 2014.
5. The Commissioner accepts that Mr Stewart submitted the requirement for review by fax on 10 February 2014. Section 74(2)(b) of FOISA states that where a thing (such as a requirement for review) is transmitted by electronic means, it is presumed to be received on the day of transmission. The SCCRC can provide no evidence to rebut this presumption.

6. On the balance of probabilities, the Commissioner accepts that the requirement for review was received by the SCCRC on 10 February 2014, even if it was not identified and acted upon. In the circumstances, she must find that the SCCRC failed to respond to the requirement within the timescale required by section 21(1) of FOISA.
7. On 5 May 2014, Mr Stewart submitted a further requirement for review. The SCCRC confirmed receipt of this.
8. Having received a copy of Mr Stewart's requirement for review on 5 May 2014, the SCCRC responded on 7 May 2014, so the Commissioner does not require it to take any further action in relation to Mr Stewart's application.

## **Decision**

The Commissioner finds that the Scottish Criminal Cases Review Commission (the SCCRC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Stewart. In particular, the SCCRC failed to respond to Mr Stewart's requirement for review within the timescale required by section 21(1) of FOISA.

Given that the SCCRC has now responded to Mr Stewart's requirement for review, she does not require the SCCRC to take any action.

## **Appeal**

---

Should either Mr Stewart or the Scottish Criminal Cases Review Commission wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. The appeal must be made within 42 days after the date of intimation of this decision.

**Euan McCulloch**  
**Deputy Head of Enforcement**  
**15 May 2014**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**