

Decision Notice



Decision 193/2010 Mr G and the Scottish Court Service

Failure to carry out a review

Reference No: 201001439

Decision Date: 23 November 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

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

Background

1. On 10 May 2010, Mr G wrote to the Judicial Office for Scotland (the Judicial Office), part of the SCS, requesting certain information relating to the handling of complaints about judicial conduct.
2. The Judicial Office responded on 19 May 2010, explaining that it was established to support the Lord President in the discharge of his responsibilities as head of the Scottish judiciary under the Judiciary and Courts (Scotland) Act 2008 (the 2008 Act). Specifically, it explained the responsibilities and powers the 2008 Act conferred on the Lord President in relation to judicial conduct, describing and providing information on the interim arrangements the Lord President had introduced in this connection.
3. On 25 May 2010, Mr G wrote to the Judicial Office asking about an aspect of the interim arrangements and also if the Judicial Office was subject to the provisions of FOISA.
4. The Judicial Office responded on 28 May 2010, answering Mr G's question about the interim arrangements and stating that the Lord President was not a public authority in terms of FOISA.
5. On 24 June 2010, Mr G wrote to the Judicial Office requesting a review of its decision. In particular, Mr G did not believe the information provided in the Judicial Office's response of 19 May 2010 was that requested in his request of 10 May 2010.
6. The Judicial Office replied on 8 July 2010 and explained certain provisions of the 2008 Act and the responsibilities of the Lord President. The Judicial Office confirmed its position that the Lord President was not listed as a public authority in terms of schedule 1 of FOISA, and was therefore not required to provide the information requested in terms of FOISA. The Judicial Office stated that any information in its possession and generated in the context of its functions supporting the Lord President was generated for, and held for the purposes of, the Lord President.



7. On 13 July 2010 Mr G wrote to the Commissioner's Office, stating that he was dissatisfied with how the Judicial Office had dealt with his information request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr G had made a request for information to a Scottish public authority (it being established that the Judicial Office was an integral part of the SCS, itself a Scottish public authority listed in Schedule 1 FOISA) and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

9. On 18 October 2010, following completion of the validation process, the SCS was notified in writing that an application had been received from Mr G and invited to comment on that application.
10. The SCS responded on 3 November 2010, acknowledging that a review had not been carried out in response to Mr G's request for review. It advised that this had now been done and supplied a copy of the response provided to Mr G.
11. Mr G wrote to the Commissioner on 16 November 2010, confirming that he had received the SCS's notification of the outcome of its review. He confirmed that he was still dissatisfied with the SCS's failure to comply with the technical requirements of FOISA in dealing with his information request.

Commissioner's analysis and findings

12. Section 21(1) of FOISA gives a Scottish public authority 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.
13. Section 21(4) sets out what an authority might do when it conducts a review. The authority can:
 - i) confirm its original decision, with or without modification;
 - ii) substitute a different decision from that originally made, or
 - iii) reach a decision where the applicant's complaint is that none has been made.
14. Section 21(5) of FOISA then requires the authority to notify the applicant of what it has done under section 21(4), and issue a statement of its reasons for so doing, within the time allowed by section 21(1).



15. In this case, the Commissioner finds that the SCS failed to carry out a review in response to Mr G's requirement for review, as required by section 21 of FOISA (and in particular subsections (4) and (5)), within the 20 working days allowed by section 21(1).
16. The Commissioner has considered the SCS's comments on this case and notes that it has now provided Mr G with a response to his requirement for review. In these circumstances, he does not require the SCS to take any further action in this particular case.

DECISION

The Commissioner finds that the Scottish Court Service (SCS) failed to comply with Mr G's requirement for review as required by section 21 of FOISA. In so doing, the SCS breached the requirements of Part 1 of FOISA.

Given that a review has now been carried out and the outcome communicated to Mr G, the Commissioner does not require the SCS to take any action in respect of this failure in response to Mr G's application.

Appeal

Should either Mr G or the Scottish Court Service 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
23 November 2010



Appendix

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.

...

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.

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