

Decision Notice

Decision 196/2017: Ms Lorna Hudson and the Scottish Ministers

Evidence regarding the removal of Glasgow Clyde Board of Management:

Failure to respond within statutory timescales

Reference No: 201701760

Decision Date: 22 November 2017



Scottish Information
Commissioner

Summary

The Scottish Ministers (the Ministers) were asked for evidence relating to the removal of the Glasgow Clyde Board of Management in October 2015. This decision finds that the Ministers failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
28 July 2017	Ms Hudson made an information request to the Ministers.
28 August 2017	The Ministers responded to the information request.
2 and 3 September 2017	Ms Hudson wrote to the Ministers requiring a review of their decision.
	Ms Hudson did not receive a response to her requirement for review.
8 October 2017	Ms Hudson wrote to the Commissioner's Office, stating that she was dissatisfied with the Minister's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6 November 2017	The Ministers were notified in writing that an application had been received from Ms Hudson and were invited to comment on the application.
9 and 13 November 2017	The Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. The Ministers explained that a review outcome for this request had been sent to Ms Hudson on 19 October 2017, but that it had been sent to the wrong "whatdotheyknow" mailbox (i.e. one relating to another request).
2. The Ministers acknowledged that Ms Hudson had queried this at the time, but they had confirmed the response had been sent to the right mailbox.
3. After receiving notification from the Commissioner about this, the Ministers re-sent the response to Ms Hudson on 13 November 2017, to the correct mailbox. They apologised for the earlier error and for any confusion caused.
4. 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.

5. In the circumstances, the Commissioner must find that the Ministers failed to comply with section 21(1) of FOISA, by not responding to the requirement for review within 20 working days. The review outcome of 19 October was late in any case, but it bore to have been issued in relation to another request (an error the Ministers failed to correct at the time, when queried). It could not be regarded as a response to Ms Hudson's requirement for review in the present case.
6. As the Ministers responded to Ms Hudson's requirement for review properly on 13 November 2017, the Commissioner does not require them to take any further action in relation to Ms Hudson's application.
7. The Commissioner notes that the Ministers have apologised to Ms Hudson for its failure to comply.

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 responding to the information request made by Ms Hudson. In particular, the Ministers failed to respond to Ms Hudson's requirement for review within the timescale laid down by sections 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of this failure, in response to Ms Hudson's application, given that a response has now been issued.

Appeal

Should either Ms Hudson or the Scottish Ministers wish to appeal against this decision, they have the right to 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.

Euan McCulloch
Deputy Head of Enforcement

22 November 2017

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