

Decision Notice



Decision 224/2011 Mr David Rule and the Scottish Ministers

Failure to comply with required timescales

Reference No: 201101898 and 201101899

Decision Date: 11 November 2011

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Kevin Dunion

Scottish Information Commissioner

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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 two information requests made by Mr David Rule.

Background

1. On 25 July 2011, Mr Rule wrote to the Ministers with two separate requests for information.
2. On 2 September 2011, having received no response to either request, Mr Rule wrote to the Ministers requesting a review of their failure to reach a decision in each case.
3. Mr Rule did not receive a response to either of his requirements for review and, on 6 October 2011, he wrote to the Commissioner expressing his dissatisfaction and applying for a decision in each case, in terms of section 47(1) of FOISA.
4. The applications were validated by establishing that Mr Rule had made his requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its failure to respond to those requests. The case was then allocated to an investigating officer.

Investigation

5. On 14 October 2011, the Ministers were notified in writing that two applications had been received from Mr Rule and were invited to comment on these applications.
6. On 10 November 2011, the Ministers informed the Commissioner that responses to both of Mr Rule's requests for review had been sent that day. They provided copies of the emailed responses.
7. The Ministers advised that there had been issues surrounding the monitoring, registering and allocating of FOI requests received into the First Minister's Office following the election in May 2011 due to the volume of correspondence and requests directed at that office, which they advised was the busiest office in the Scottish Government and had to deal with a vast, wide-ranging subject base and numerous time-consuming demands on staff time.



8. The Ministers informed the Commissioner that a new staff member would be joining the office team to monitor, register and ensure due attention was given to timescales of FOI requests received. The Ministers hoped that this would result in fewer oversights with regard to requests.

Commissioner's analysis and findings

9. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in either of these cases.
10. Given that the Ministers did not respond to either of Mr Rule's requests of 25 July 2011, the Commissioner finds that the Ministers failed to respond to Mr Rule's requests for information within the 20 working days allowed by section 10(1) of FOISA.
11. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in either of these cases. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4) and (5)).
12. The Commissioner finds that the Ministers failed to deal with Mr Rule's requirements for review within the 20 working days required by section 21(1) of FOISA.
13. As the Ministers have now dealt with Mr Rule's requirements for review, the Commissioner does not require any further steps in relation to these particular failures. The Commissioner is pleased to note that the Ministers are taking steps to improve compliance with FOISA when dealing with information requests involving the First Minister's Office.

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), by failing to respond to Mr Rule's requests for information within the timescale required by section 10(1) of FOISA and by failing to comply with Mr Rule's requirements for review within the timescale required by section 21 of FOISA.

As the Ministers have now dealt with Mr Rule's requirements for review, the Commissioner does not require any further steps in respect of these failures in response to Mr Rule's application.



Appeal

Should either Mr Rule 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.

Euan McCulloch
Deputy Head of Enforcement
11 November 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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; or

...

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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