

# Decision Notice

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## **Decision 231/2014: Daniel Smillie and the Scottish Public Pensions Agency**

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### **Employment Records: failure to respond within statutory timescales**

Reference No: 201402390

Decision Date: 4 November 2014



Scottish Information  
Commissioner

## Summary

On 13 July 2014, Mr Smillie asked the Scottish Public Pensions Agency (the SPPA) for information about his employment records. This decision finds that the SPPA failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the SPPA failed to comply with Mr Smillie's requirement for review within the timescale set down by FOISA.

## Background

| Date             | Action   |
|------------------|--|
| 13 July 2014     | Mr Smillie made an information request to the SPPA.  |
|                  | The SPPA did not respond to the information request.   |
| 1 September 2014 | Mr Smillie wrote to the SPPA, requiring a review in respect of its failure to respond.   |
|                  | Mr Smillie did not receive a response to his requirement for review.   |
| 7 October 2014   | Mr Smillie wrote to the Commissioner's Office, stating that he was dissatisfied with the Minister's failures to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 22 October 2014  | The SPPA was notified in writing that an application had been received from Mr Smillie and was invited to comment on the application.  |
| 3 November 2014  | The Commissioner received submissions from the SPPA. These submissions are considered below.   |

## Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the SPPA did not provide a response to Mr Smillie's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
3. 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. Again, this is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the SPPA did not provide a response to Mr Smillie's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. The SPPA acknowledged that it had not identified Mr Smillie's request for information within his correspondence, and apologised for this error. The Commissioner recognises that the request formed a small part of a letter on issues underlying the request, itself part of a course of correspondence, but that does not relieve the authority of the duty to respond within the statutory timescales.
6. The SPPA responded to Mr Smillie's requirement for review on 31 October 2014, so the Commissioner does not require it to take any further action in relation to Mr Smillie's application.

## **Decision**

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The Commissioner finds that the Scottish Public Pensions Agency (the SPPA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Smillie. In particular, it failed to respond to Mr Smillie's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the SPPA to take any action in respect of these failures, in response to Mr Smillie's application, given that a response has now been issued.

## **Appeal**

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Should either Mr Smillie or the Scottish Public Pensions Agency 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**

**4 November 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)**