

Decision Notice



Decision 022/2009 Mr David Rule and the Scottish Ministers

Failure to respond to request for information and requirement for review

Reference No: 200900171

Decision Date: 25 February 2009

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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 particular the relevant timescales) in responding to an information request made by Mr Rule.

Background

1. On 30 October 2008, Mr Rule wrote to the Ministers requesting the following information:
 - All correspondence between the First Minister's Office and Visit Scotland during the months of August and September of 2008
 - All correspondence regarding Visit Scotland to or from the First Minister, Mr Salmond, and all correspondence regarding Visit Scotland to or from his Special Advisor, Kevin Pringle, during the same two months.

He stated that the requests were to include internal correspondence within the First Minister's Office.
2. On 31 October 2008, Mr Rule modified his request to the extent that where it made reference to "Visit Scotland" he wished this replaced with "either Visit Scotland, Historic Scotland or Event Scotland".
3. The Ministers acknowledged Mr Rule's request for information on 2 December 2008, apologising for not responding within the twenty working days allowed by section 10(1) of FOISA.
4. On 12 December 2008, Mr Rule wrote to the Ministers indicating that since they had not responded to his request, he requested a review of their deemed refusal to provide him with the information requested in his email of 31 October 2008.
5. On 7 January 2009, the Ministers informed Mr Rule that the search for information relevant to his request had been completed and that they were in the process of considering exemptions which might apply, indicating that the process was taking longer than expected.
6. The Ministers wrote to Mr Rule in response to his request for review on 21 January 2009. They acknowledged that the legislation was clear in requiring them to comply with a request or issue a refusal notice within 20 working days of receipt of the request. The Ministers stated that it was unfortunate that in Mr Rule's case they had clearly not met the timeframes, apologising for the delay.



7. The Ministers continued that officials handling the request had given assurances that they were continuing to collate and consider any information falling within its scope. They regretted the delay in providing him with a response and confirmed that the intention was to provide him with a response in very early course.
8. On 22 January 2009 Mr Rule wrote to the Commissioner, stating that he was dissatisfied that the Ministers had still not responded to his original request and that the response to the request for review was outwith the time allowed by section 21(1) of FOISA, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Rule had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 10 February 2009 the Ministers were notified in writing that an application had been received from Mr Rule and were invited to comment on the application, as required by section 49(3)(a) of FOISA.
11. The Ministers responded on 24 February 2009, stating that Mr Rule's requests for information had been particularly wide ranging and that he had been updated in the interim, pointing out that the First Minister's Office was an extremely busy one which had to fit the handling of FOI requests (of which Mr Rule had submitted a number around the same time) around its regular work. However, they accepted that the response to Mr Rule's request was very late and unreservedly apologised for the delay in responding. They submitted that their response to Mr Rule's request for review was in fact only three working days late.
12. The Ministers and Mr Rule confirmed that the Ministers had provided a response to the request on 20 February 2009. Mr Rule confirmed that he continued to require a decision from the Commissioner.

Commissioner's analysis and findings

13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.



14. The Commissioner finds that the Ministers failed to respond to Mr Rule's request for information of 30, as modified on 31 October 2008, within the 20 working days allowed by section 10(1) of FOISA.
15. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exemptions which are not relevant in this case.
16. The Commissioner also finds that the Ministers failed to respond to Mr Rules requirement for review of 12 December 2008 within the 20 working days allowed under section 21(1) of FOISA.
17. Section 21(4) of FOISA provides an authority with three possible options for responding to a requirement for review. Of these, however, the only one available where the applicant's complaint is that no decision has been reached (as in this case) is that set out in section 21(4)(c), in other words to reach a decision on the applicant's request. Given the terms of the Ministers' response of 21 January 2009, therefore, the Commissioner cannot accept that a review meeting the requirements of section 21 of FOISA has been carried out in this case.
18. In failing to comply with the timescales, and other requirements considered above, the Ministers failed to comply with Part 1 of FOISA.
19. The Commissioner notes that the Ministers have now written to Mr Rule in response to his request and have apologised to him. He also notes the pressures that may have been created for the First Minister's Office at a particular time by this and other information requests, and acknowledges that the volume of such requests to be expected at any given time may be difficult to predict. This difficulty cannot, however, be unique to the demands of FOISA, and the Commissioner would observe that Part 1 of FOISA imposes statutory requirements which all Scottish public authorities must make adequate arrangements to discharge.

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 dealing with the information request made by Mr Rule, in particular by failing to respond to Mr Rule's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA, and also by failing to carry out a review meeting the requirements of section 21 of FOISA when they purported to do so. Given that the Ministers have now responded to Mr Rule's request for information, the Commissioner does not require any further action in response to this particular application in relation to these failures.

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Mr David Rule
and the Scottish Ministers



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 notice.

Euan McCulloch
Deputy Head of Enforcement
25 February 2009



Appendix

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.

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.