

Decision Notice



Decision 045/2009 Stewart MacKenzie and the Scottish Legal Complaints Commission

Failure to respond to request within the required timescale

Reference No: 200900553

Decision Date: 06 April 2009

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether the Scottish legal Complaints Commission (the SLCC) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) (and in particular the requisite timescales) in responding to an information request made by Mr MacKenzie.

Background

1. On 11 December 2008, Mr MacKenzie sent a faxed letter to the SLCC requesting the following information: “copies of the presentation information from the meeting with the Law Society and RSA [Royal and Sun Alliance] which members gave to Secretariat, and referred to at 7.2 of the minutes of the 27th October meeting of the members of the SLCC”.
2. On 15 December 2008, the SLCC replied to Mr MacKenzie, acknowledging his request and stating that under the terms of FOISA he would receive a response within 20 working days or by Monday 19 January 2009.
3. Mr MacKenzie states that the SLCC contacted him by telephone a few days prior to 16 January 2009, and he was advised that the deadline of 19 January 2009 would not be met. Whilst he acknowledges that he informed the SLCC not to worry about such a delay, he states that he did so on the understanding that the response would only be a few days late. The SLCC, however, have noted this telephone call as taking place on 21 January 2009.
4. On 2 February 2009 and again on 5 February 2009, Mr MacKenzie faxed intimation to the SLCC that no response had yet been received.
5. On 24 February 2009, Mr MacKenzie wrote to the SLCC requesting a review of its handling of his request for information. In particular, Mr MacKenzie drew SLCC’s attention to the fact that despite numerous telephone calls and assurances that his request was being responded to, no such response had been received.
6. The SLCC notified Mr MacKenzie of the outcome of its review on 27 February 2009. The SLCC indicated that it was unfortunate that the response had not been provided to him within the statutory period set and that a response to his request would be posted to him on 3 March 2009.
7. On 9 March 2009, Mr MacKenzie again wrote to the SLCC, stating that he still had not received a response and drawing the SLCC’s attention to the fact that the response was now only one week short of being two months outwith the statutory period.



8. Mr MacKenzie received a response (dated 9 March 2009) to his request for information on 11 March 2009, providing him with some information while withholding other information as being exempt in terms of FOISA. While technically this response should have been a response to the request for review (in that a decision had now been reached following that request), it informed Mr MacKenzie of his right to request a review and that if dissatisfied with the outcome of that review he had the right to appeal to the Commissioner.
9. On 19 March 2009, Mr MacKenzie wrote to the Commissioner's Office, stating that he was dissatisfied with the way in which the SLCC had dealt with his request for information and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. In particular Mr MacKenzie indicated that while he was satisfied with the SLCC's response to his request, he was dissatisfied with the amount of time taken to supply him with the information, the SLCC's failure to respond to his letters and telephone calls, and the fact that in the response to the review, as outlined at paragraph 6 above, he had been told that the information would be posted to him on 3 March 2009 when in fact it was not posted until 9 March 2009.
10. The application was validated by establishing that Mr MacKenzie 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

11. On 26 March 2009, the SLCC was notified in writing that an application had been received from Mr MacKenzie and was invited to comment on the application, as required by section 49(3)(a) of FOISA.
12. The SLCC responded on 31 March 2009, confirming that it had received Mr MacKenzie's request for information on 12 December 2008 and that in addition to this request, a further two requests had been received from him within a relatively short space of time. The SLCC continued that the quick succession of the three requests and the amount of information requested had a serious impact on its ability to respond, particularly due to difficulties of locating information which was created before the formal opening of the SLCC on 1 October 2008.
13. However, the SLCC accepted that the response to Mr MacKenzie's request was very late and apologised for the delay in responding. It confirmed that it was taking active measures to deal effectively and efficiently with future requests for information under FOISA.



Commissioner's analysis and findings

14. 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 exceptions which are not relevant in this case.
15. The SLCC acknowledge that having received Mr MacKenzie's request for information dated 11 December 2008 on 12 December 2008, it did not respond until 9 March 2009 (received by Mr MacKenzie on 11 March 2009).
16. The Commissioner therefore finds that the SLCC failed to respond to Mr MacKenzie's request for information of 11 December 2008, within the 20 working days allowed by section 10(1) of FOISA.
17. 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 exceptions which are not relevant in this case.
18. While the Commissioner finds that the SLCC responded to Mr MacKenzie's request for review within the 20 working days (providing both a direct response to that request and a substantive response to his information request within that period), he would observe that what appears to have been its direct response to the review request did not satisfy the requirements of section 21 of FOISA.
19. 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 SLCC's response of 27 February 2009, which merely further extended the time it would take to respond to the initial request, the Commissioner could not accept that this met the requirements of section 21 of FOISA.
20. In failing to comply with the timescale required by section 10(1) of FOISA, as outlined above, the SLCC failed to comply with Part 1 of FOISA. The Commissioner notes, however, that a response to Mr MacKenzie's information request has since been sent to him.
21. The Commissioner notes that the SLCC wrote to Mr MacKenzie on 12 March 2009 and apologised to him for the delays. He also notes the pressures that may have been created for the SLCC 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 that all Scottish public authorities (even in the earliest stages of being subject to the legislation) must make adequate arrangements to discharge their responsibilities under FOISA.

Decision 045/2009
Mr Stewart MacKenzie
and the Scottish Legal Complaints Commission



22. In this regards the Commissioner notes that the SLCC has indicated that it has now developed and introduced a more structured approach to information management and dealt with relevant staffing issues, and that this should help it deal more effectively and efficiently with FOISA requests in the future.

DECISION

The Commissioner finds that the Scottish Legal Complaints Commission (the SLCC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr MacKenzie, in particular by failing to respond to Mr MacKenzie's request for information within the respective timescale laid down by section 10(1) of FOISA. Given that the SLCC has since responded to Mr MacKenzie's request for information, the Commissioner does not require any further action in response to this particular application.

Appeal

Should either Mr MacKenzie or the Scottish Legal Complaints Commission 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
06 April 2009



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.

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.