

Decision Notice



Decision 113/2009 Mr M W Williams and the Scottish Ministers

Failure to respond to request for review

Reference No: 200900906

Decision Date: 24 September 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 Ministers (the Ministers) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to a requirement for review in relation to an information request made by Mr M W Williams.

Background

1. On 1 March 2009, Mr Williams wrote to the Scottish Government (referred to in this Decision Notice as “the Ministers”) to request a personal statement from eight named Heads of Department, to include each Department’s bullying record over the past 12 years, the number of reported incidents, and the number and degree of disciplinary actions taken.
2. On 1 April 2009, Mr Williams wrote to the Ministers to complain that he had not received a response, and asked for a review of the way in which the Ministers had dealt with his request.
3. On 23 April 2009, Mr Williams again wrote to request a review of the failure to respond to his request of 1 March 2009. He sent a further letter on 1 May 2009, again complaining that his request for a personal statement on departmental bullying records had received no response.
4. On 2 June 2009, the Ministers wrote to Mr Williams to advise that a response to his request of 1 March 2009 had been sent to him on 18 March 2009. A copy of that letter was enclosed. It gave Mr Williams notice that his request for personal statements on departmental bullying records was deemed to be vexatious, and that under section 14(1) of FOISA, the Ministers were not obliged to comply with his request. The Ministers advised that his request was considered vexatious because it was the latest in a series of requests which had imposed a significant burden on the Scottish Government and because, on the evidence of previous correspondence, the request seemed designed to cause disruption or annoyance to the Scottish Government, and had the effect of harassing the Government.
5. The Ministers’ letter of 2 June 2009 also advised Mr Williams that a review of the response to his request of 1 March 2009 (i.e. the Ministers’ letter of 18 March 2009) was ongoing.
6. On 10 July 2009, Mr Williams wrote to the Commissioner, stating that he was dissatisfied with way in which the Ministers had dealt with his request, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



7. The application was validated by establishing that Mr Williams 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

8. On 28 July 2009, the Ministers were notified in writing that an application had been received from Mr Williams and were invited to comment on the application.
9. On 11 August 2009, the Ministers confirmed that Mr Williams had not received a response to his request for review. The Ministers attributed this to human error and a breakdown in communications between the office which replied to Mr Williams on 2 June 2009 and the office which was believed to be undertaking the review. The Ministers apologised unreservedly for this error. However, the Ministers suggested that, given the nature and quantity of correspondence received from Mr Williams, an element of confusion was perhaps not entirely unlikely.
10. The Ministers indicated that a review response would shortly be sent to Mr Williams. The review response was sent on 24 August 2009. It upheld the decision to treat his request of 1 March 2009 as vexatious under section 14(1) of FOISA.

Commissioner's analysis and findings

11. Section 14(1) of FOISA states that section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
12. Under section 20(1), an applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information may require the authority to review its actions and decisions in relation to that request.
13. Under section 21(8) of FOISA, a Scottish public authority is not obliged to comply with a requirement for review if the request to which it relates was considered to be vexatious. Therefore, as the Ministers had advised Mr Williams that his request was considered to be vexatious in terms of section 14(1) of FOISA, they were not obliged to comply with his request for a review.
14. However, section 21(9) of FOISA stipulates that in such situations the authority must give the applicant notice in writing that it will not comply with the request for review, and that this notice must be sent not later than the twentieth working day after receipt of the request for review (as required by section 21(1) of FOISA).



15. Although the public authority is not obliged to carry out a review of its response regarding a request deemed to be vexatious, it has discretion to do so. The public authority must then issue its review response within 20 working days of receipt of the requirement for review (section 21(1) of FOISA).
16. In this case, it is clear that the Ministers did not give Mr Williams notice that they did not intend to comply with his request for review, or alternatively provide him with the outcome of their review, within the statutory timescale of 20 working days. The Commissioner finds that the Ministers therefore failed to comply with section 21(1) of FOISA.
17. The Commissioner notes that the Ministers have now provided Mr Williams with the outcome of their review of the response to his request of 1 March 2009. He does not require the Ministers to take any further action in relation to this matter.

DECISION

The Commissioner finds that 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 Williams, in particular by failing to respond to Mr Williams' requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that the Ministers have now responded to the requirement for review, the Commissioner does not require the Ministers to take any action in response to this failure.

Appeal

Should either Mr Williams or the 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.

Margaret Keyse
Head of Enforcement
24 September 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.
- (...)
- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

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.
 - (...)
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.