

Decision Notice



Decision 102/2013 Dr Hazel MacIver and the Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201300901
Decision Date: 30 May 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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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 information request made by Dr Maclver on 29 January 2013.

Background

1. On 29 January 2013, Dr Maclver wrote to the Ministers requesting certain specified information.
2. Dr Maclver received no response to her request for information.
3. On 5 March 2013, Dr Maclver wrote to the Ministers, requesting a review in respect of their failure to respond.
4. Dr Maclver did not receive a response to her requirement for review and, on 8 April 2013, wrote to the Commissioner's Office, stating that she was dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that Dr Maclver made a request for information to a Scottish public authority and 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

6. On 16 April 2013, the Ministers were notified in writing that an application had been received from Dr Maclver and were invited to comment on the application.
7. The Ministers responded on 9 May 2013, enclosing a copy of the response provided to Dr Maclver's requirement for review on the same date.



Commissioner's analysis and findings

8. 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, subject to certain exceptions which are not relevant in this case.
9. Since the Ministers did not provide a response to Dr Maclver's request for information within 20 working days, the Commissioner finds that they failed to comply with section 10(1) of FOISA.
10. 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, subject to certain exceptions which are not relevant in this case.
11. Since the Ministers did not provide a response to Dr Maclver's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
12. Given that the Ministers have now responded to Dr Maclver's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Dr Maclver's application.

DECISION

The Commissioner finds that the Scottish Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Dr Maclver, in particular by failing to respond to Dr Maclver's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the Ministers have now responded to Dr Maclver's requirement for review, the Commissioner does not require them to take any action in respect of these failures, in response to Dr Maclver's application.



Appeal

Should either Dr Maclver 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
30 May 2013



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.

...