

Decision Notice



Decision 143/2013 Simon Johnson of The Daily Telegraph and Scottish Ministers

Failure to respond to request and requirement for review

Reference No: 201301390
Decision Date: 17 July 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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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 Simon Johnson (Mr Johnson).

Background

1. On 19 March 2013, Mr Johnson wrote to the Ministers requesting certain specified information.
2. Mr Johnson received no response to his request for information.
3. On 1 May 2013, Mr Johnson wrote to the Ministers requesting a review in respect of the authority's failure to respond.
4. Mr Johnson did not receive a response to his requirement for review and on 13 June 2013 wrote to the Commissioner's Office, stating that he 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 Mr Johnson 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

6. On 3 July 2013, the Ministers were notified in writing that an application had been received from Mr Johnson and invited to comment on the application.
7. The Ministers responded on 15 July 2013 confirming that they had responded to Mr Johnson on 4 July 2013. They provided a copy of the response.



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 Mr Johnson'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 Mr Johnson'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 Mr Johnson's requirement for review, the Commissioner does not require them to take any further action in this case, in response to Mr Johnson's application.



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 Johnson, in particular by failing to respond to Mr Johnson'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 Mr Johnson's requirement for review, the Commissioner does not require the Ministers to take any action in response to these failures.

Appeal

Should either Mr Johnson 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.

Margaret Keyse
Head of Enforcement
17 July 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-

...

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.

...