

Decision Notice

Decision 189/2014: Mr G and the Scottish Ministers

Privileged correspondence: failure to respond within statutory timescales

Reference No: 201401962

Decision Date: 1 September 2014



Scottish Information
Commissioner

Summary

On 15 May 2014, Mr G asked the Scottish Ministers (the Ministers) for information about an agreement with the Scottish Legal Aid Board (SLAB) in respect of privileged correspondence. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). However, the decision finds that the Ministers provided a response to Mr G's requirement for review within 20 working days, and complied with section 21(1) of FOISA.

Background

Date	Action
15 May 2014	Mr G made an information request to the Ministers.
	The Ministers did not respond directly to the information request, but wrote to solicitors who acted on behalf of Mr G.
5 July 2014	Mr G wrote to the Ministers requiring a review of their decision in respect of their failure to respond.
	Mr G did not receive a response to his requirement for review.
5 August 2014	Mr G wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failures to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
5 August 2014	The Scottish Prison Service posted a review response on behalf of the Ministers.
8 August 2014	Mr G wrote again to the Commissioner's Office, again applying for a decision from the Commissioner about the Ministers' failures to respond.
14 August 2014	The Ministers were notified in writing that an application had been received from Mr G and were invited to comment on the application.
22 August 2014	Commissioner received submissions from the Ministers. These submissions are considered below.

Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. The Ministers acknowledged that they had not provided a response to Mr G's request within the timescale. It is a matter of fact that the Ministers did not provide a response to Mr G's

request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.

3. Mr G stated that his requirement for review was sent by fax to the Ministers on Saturday 5 July 2014. However, the Ministers stated that the fax machine to which it was sent was not working. The person who had faxed the requirement for review for Mr G was contacted by the Ministers by phone on Monday 7 July 2014, and was given another fax number to use. The review was then sent to that fax number. Mr G's requirement for review was therefore received by the Ministers on Monday 7 July 2014, and the Ministers submitted that the 20 working day deadline for responding was Tuesday 5 August 2014, not 1 August 2014 as Mr G suggested.
4. The Ministers explained that they had passed the requirement for review to the Scottish Prison Service (SPS), and the SPS had posted a review response to Mr G on 5 August 2014. The Ministers submitted that the review response was therefore issued on time, although Mr G did not receive it until 7 August 2014.
5. 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. Again, this is subject to qualifications which are not relevant in this case.
6. 'Working day' is defined in section 73 of FOISA as any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971 (c.80), is a bank holiday in Scotland. Bank holidays for Scotland include the first Monday in August. In this instance, Monday 4 August 2014 was not a working day for the purposes of FOISA.
7. The Commissioner accepts the Ministers' submission that the review response was posted by the SPS on 5 August 2014, which was the twentieth working day after the requirement for review was received.
8. The Commissioner finds that, as a matter of fact, the Ministers provided a response to Mr G's requirement for review within 20 working days. The Commissioner finds that they complied with section 21(1) of FOISA.
9. The Commissioner does not require the Ministers to take any action in relation to Mr G's application.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr G.

The Commissioner finds that the Ministers failed to respond to Mr G' request for information within the timescale laid down by section 10(1) of FOISA. However, the Ministers complied with Part 1 of FOISA in responding to Mr G's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in relation to Mr G's application.

Appeal

Should either Mr G or the Scottish Ministers wish to appeal against this decision, they have the right to 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.

Alison Davies

Deputy Head of Enforcement

1 September 2014

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