

Decision Notice

Decision 245/2014: Shetland Line (1984) Ltd and the Scottish Ministers

Northern Isles Ferry Services contract: failure to respond within statutory timescales

Reference No: 201402441

Decision Date: 21 November 2014



Scottish Information
Commissioner

Summary

On 16 October 2014, Shetland Line (1984) Limited (SLL) asked the Scottish Ministers (the Ministers) for information about bid proposals and other information relating to the Northern Isles Ferry Services contract. 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). The decision also finds that the Ministers failed to comply with SLL's requirement for review within the timescale set down by FOISA.

Background

Date	Action
13 June 2014	Maclay Murray & Spens LLP, on behalf of SLL, made an information request to the Ministers.
10 July 2014	The Ministers acknowledged the request, but apologised that there would be a delay in responding to it.
26 August 2014	SLL wrote to the Ministers requiring a review in respect of their failure to respond.
1 September 2014	Although the Ministers acknowledged SLL's request for review, SLL did not receive a response to its requirement for review.
16 October 2014	SLL wrote to the Commissioner's Office, stating that it was dissatisfied with the Ministers' failures to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
27 October 2014	The Ministers were notified in writing that an application had been received from SLL and were invited to comment on the application.
14 November 2014	The 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. It is a matter of fact that the Ministers did not provide a response to SLL's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
3. 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.

4. It is a matter of fact that the Ministers did not provide a response to SLL's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
5. The Ministers responded to SLL's requirement for review on 13 November 2014, so the Commissioner does not require them to take any further action in relation to SLL's application.
6. The Ministers apologised for the delay in responding to SLL's request. They explained that the process of identifying, locating and retrieving information took a considerable amount of time due to the large quantity of information caught within the scope of the request.

Decision

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

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to SLL's application, given that a response to SLL's requirement for review has now been issued.

Appeal

Should either SLL 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

21 November 2014

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info