

Decision Notice

Decision 062/2019: Mr H and the Scottish Ministers

Shareholder agreements: failure to respond within statutory timescales

Reference No: 201900502

Decision Date: 10 April 2019



Scottish Information
Commissioner

Summary

On 17 January 2019, Mr H asked the Scottish Ministers (the Ministers) for information about shareholder agreements. 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 Mr H's requirement for review within the timescale set down by FOISA.

Background

Date	Action
17 January 2019	Mr H made an information request to the Ministers.
	The Ministers acknowledged receipt of Mr H's request on 21 January 2019 but did not respond to the information request.
20 February 2019	Mr H wrote to the Ministers, requiring a review in respect of their failure to respond.
	Mr H did not receive a response to his requirement for review.
21 March 2019	Mr H wrote to the Commissioner's Office, stating that he was dissatisfied with the Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
28 March 2019	The Ministers were notified in writing that an application had been received from Mr H and were invited to comment on the application.
5 April 2019	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 Mr H'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 Mr H'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 remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review
6. The Ministers responded to Mr H's requirement for review on 27 March 2019, with an apology and explanation for the delays, so the Commissioner does not require them to take any further action in relation to Mr H's application.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr H. In particular, they failed to respond to Mr H'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 Mr H's application, given that a review outcome was issued on 27 March 2019.

Appeal

Should either Mr H 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.

Euan McCulloch
Deputy Head of Enforcement

10 April 2019

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info