

# Decision Notice 066/2022

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## Details of meetings – failure to respond

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**Applicant: The Applicant**

**Public authority: Scottish Ministers**

**Case Ref: 202200528**



Scottish Information  
Commissioner

## Summary

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The Applicant asked the Scottish Ministers (the Ministers) for all correspondence and details of all meetings between the Scottish Government, officials or civil servants, and Rape Crisis Scotland and the Rape and Sexual Assault Survivors Reference Group (including dates, name and role of persons attending, agenda, minutes or notes), covering the months of November and December 2020.

This decision finds that the Ministers failed to respond to the request and request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the Ministers to comply with the requirement for review.

## Background

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1. On 1 February 2022 the Applicant made an information request to the Ministers.
2. The Ministers responded to the information request on 17 February 2022, explaining that the costs of locating, retrieving and providing the information requested would exceed the upper cost limit in FOISA. They asked the Applicant to consider narrowing the scope of the request.
3. The Applicant submitted a new request to the Ministers on 17 February 2022 (for the same information), but restricted the time period to the months of November and December 2020.
4. On 18 March 2022, the Applicant wrote to the Ministers requiring a review of their failure to respond to the narrowed request of 17 February 2022. Having received no response, the Applicant chased this up on 24 and 31 March 2022.
5. The Ministers acknowledged receipt of the narrowed request on 12 April 2022, however the Applicant did not receive a response to her requirement for review.
6. The Applicant wrote to the Commissioner on 9 May 2022, stating that she was dissatisfied with Ministers' failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. On 17 May 2022, the Ministers were notified in writing that an application had been received from the Applicant and were invited to comment on the application.
8. The Commissioner received submissions from the Ministers on 31 May 2022. These submissions are considered below.

## Commissioner's analysis and findings

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9. In their submissions to the Commissioner, the Ministers confirmed that, due to an administrative error, the Applicant's requirement for review was overlooked and this error was only identified when they received notification of the Applicant's appeal to the Commissioner. They confirmed that the requirement for review had been received via an email address linked to their case management system, but this return email address was not routinely monitored.

10. The Ministers explained that, in order to mitigate against the risk of failing to identify future information requests and requirements for review submitted via this email address, they were taking action to automatically advise senders of the correct email address to use for information requests. The Ministers confirmed that urgent work was ongoing to address this issue which had been raised with the case management system provider and IT colleagues.
11. The Ministers confirmed that colleagues in the Equality and Human Rights Division were now dealing with the requirement for review and a response would be issued the Applicant as soon as possible, with a copy provided to the Commissioner.
12. 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.
13. It is a matter of fact that the Ministers did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
14. 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.
15. It is a matter of fact that the Ministers did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
16. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Ministers failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
17. The Commissioner recommends that the Ministers consider whether it would be appropriate to apologise to the Applicant for their failure to comply.
18. While the Commissioner welcomes the steps being taken to address the issue surrounding the use of the email address in question (which led to the failure to respond to the requirement for review within the statutory timescale), he notes that the same issue was a relevant factor in [Decision 018/2022](https://www.itspublicknowledge.info/decision-0182022)<sup>1</sup> (issued on 2 February 2022). The Commissioner is therefore concerned that this matter has not yet been resolved. He would urge the Ministers to ensure this matter is resolved without any further delay to avoid any future recurrence.

## Decision

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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 dealing with the information request made by the Applicant. In particular, the Ministers failed to respond to the Applicant's request and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the Ministers to respond to the requirement for review, by **Tuesday 26 July 2022**.

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<sup>1</sup> <https://www.itspublicknowledge.info/decision-0182022>

## **Appeal**

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Should either the Applicant or the 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.

## **Enforcement**

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If the Ministers fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Ministers has failed to comply. The Court has the right to inquire into the matter and may deal with the Ministers as if they had committed a contempt of court.

**Wendy Snedden**  
**Freedom of Information Officer**

**14 June 2022**

**Scottish Information Commissioner**

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