Decision 135/2007 Mr Edward Milne and the Chief Constable of Tayside Police

Request for details of a complaint made by Mr Milne to the Chief Constable of Tayside Police

Applicant: Mr Edward Milne
Authority: The Chief Constable of Tayside Police
Case No: 200601643
Decision Date: 13 August 2007

Kevin Dunion
Scottish Information Commissioner

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Decision 135/2007 Mr Edward Milne and the Chief Constable of Tayside Police

Request for information relating to a complaint made to Tayside Police by Mr Milne –Information not held – failure to provide responses within required timescales

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (general entitlement); 10(1) (Time for compliance); 17(1) (information not held); 21(1) (Review by Scottish public authority).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Milne requested details of a complaint which he had made from the Chief Constable of Tayside Police (Tayside Police) under the Freedom of Information (Scotland) Act 2002 (FOISA).

Tayside Police responded to Mr Milne asking him to clarify his request. Although Mr Milne provided Tayside Police with clarification of his request, he received no response. He was dissatisfied with Tayside Police's failure to respond to him and requested that they carry out a review.

Tayside Police responded to Mr Milne's request for review, by giving notice under section 17(1) of FOISA that they did not hold any information in relation to his request. Mr Milne remained dissatisfied with their response and applied to the Commissioner to investigate on his behalf.

Following an investigation, the Commissioner found that Tayside Police did not respond to Mr Milne's clarification of his request within the 20 working day limit set out by section 10(1) of FOISA. He also found that Tayside Police failed to comply with the timescale for review set out in section 21(1) of FOISA.

However, the Commissioner was satisfied that Tayside Police did not hold any information in relation to Mr Milne's request.

Background

1. On 4 January 2006, Mr Milne made a subject access request under section 7 of the Data Protection Act 1998 (the DPA) for all of the information which Tayside Police held relating to a complaint which he had made to them about the conduct of certain police officers and which was personal data relating to him using the rights given to him by the DPA. He also requested all remaining information relating to his request (which was not personal data relating to him) using the rights given to him by FOISA.

2. Tayside Police did not respond to Mr Milne's request or to his subsequent request for review and so Mr Milne wrote to me asking that I investigate the matter. In decision 165/2006 I found that Tayside Police breached sections 10(1) and 21(1) of FOISA in not responding to Mr Milne's request or request for review. I will not comment further on these initial failings in this decision, which will be concerned only with Tayside Police's response to and subsequent review of Mr Milne's request.

3. Tayside Police responded to Mr Milne's request on 10 July 2006, noting that they could find no record of a complaint made by him, having searched a number of systems. They asked that he provide them with details of when and to whom he had made the complaint.

4. Mr Milne provided Tayside Police with the approximate time and date of his complaint by fax on 18 July 2006. He did not receive a response and so requested that Tayside Police review their handling of his request on 9 September 2006.

5. Tayside Police responded to Mr Milne's request for review on 13 October 2006, giving him notice under section 17(1) of FOISA that they did not hold any information relating to his request.

6. On 16 October 2006 Mr Milne wrote to my Office, stating that he was dissatisfied with the outcome of Tayside Police's review and with the manner in which his request had been handled and applying to me for a decision in terms of section 47(1) of FOISA.

7. The application was validated by establishing that Mr Milne had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

The Investigation

8. On 26 October 2006 Tayside Police were notified in writing that an application had been received from Mr Milne and were asked to provide my Office with specified items of information required for the purposes of the investigation.

9. Tayside Police did not respond, and on 15 November 2006 an information notice was issued under the terms of section 50 of FOISA, requiring them to provide me with their comments on the case and any evidence to support their claim that the information Mr Milne requested was not held. Tayside Police responded to the notice and the case was allocated to an investigating officer.

10. Tayside Police's submissions informed me that they had checked both their force and divisional complaints registers for a record of the complaint to which Mr Milne's request referred, but had not found any reference to this. Subsequent enquiries after Mr Milne provided further information about the time and date of his complaint had allowed identification of the police officer who had dealt with this matter. The Police have advised me that Mr Milne's complaint prompted a visit to Mr Milne by a police officer, during which Tayside Police understood the matter to have been resolved. As a result, no formal complaint was ever logged within the various systems searched. Tayside Police therefore concluded that no recorded information was held in relation to Mr Milne's request.

11. The investigating officer subsequently contacted Tayside Police, asking them to provide further comments and to respond to specific queries relating to Mr Milne's application. Tayside Police supplied documentary evidence of the searches it carried out for information falling within the scope of Mr Milne's information request, and further information relevant to the case.

12. In these exchanges, Tayside Police confirmed that a relevant entry had made in the note book of the police officer who had visited Mr Milne following his complaint. However, they noted that this would fall within the scope of the part of Mr Milne's request that sought his own personal data under the terms of the DPA. As Mr Milne's request under FOISA had requested only information that was not his own personal data, Tayside Police still maintained in terms of section 17 that no information relevant to Mr Milne's request under FOISA was held.

The Commissioner's Analysis and Findings

13. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Milne and Tayside Police and I am satisfied that no matter of relevance has been overlooked.

14. As I have set out above, Mr Milne's request to Tayside Police made both a subject access request under section 7 of the DPA for information which was personal to him, and a request under FOISA which sought only any remaining information which Tayside Police held on this matter which was not personal to him.

15. Mr Milne's request under FOISA was therefore restricted to information which did not fall under the definition of personal data contained within the DPA, and it is not within my remit to comment on Tayside Police's handling of a subject access request under DPA. I will therefore only comment below on Tayside Police's handling of the request for non-personal data that was made under FOISA.

Whether the information requested is held by Tayside Police

16. Section 17(1) of FOISA requires that where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held. In this case, Tayside Police notified Mr Milne that no relevant information was held.

17. Mr Milne disputed this and applied to me to determine whether Tayside Police held any information.

18. Having considered Tayside Police's submissions and the evidence which it provided in support of those submissions, I am satisfied that it holds no information that is not personal to Mr Milne in relation to his complaint. I have been provided with evidence that demonstrates that no formal complaint was ever logged within Tayside Police's relevant systems, and that the Police had understood this matter to have been resolved without further action.

19. In my investigation, it became clear that there was some information concerning Mr Milne's complaint contained within a police officer's notebook. However, I am satisfied that this information would constitute Mr Milne's own personal data, and as such this falls outwith his request under the terms of FOISA, and would fall within the scope of Mr Milne's request for his own personal data under DPA.

20. Therefore, I am satisfied that Tayside Police was correct to issue Mr Milne with a notice under the terms of section 17(1) of FOISA stating that they did not hold any information relating to his request.

Technical breaches

21. I have previously noted that Tayside Police breached the procedural requirements of FOISA in responding to Mr Milne's initial request for information and his request for review of the failure to respond. These issues have been discussed in decision number 165/2006 and I do not intend to explore them further here.

22. However, I am disappointed to note that there have been further technical breaches in the handling of this matter after Mr Milne's previous application to me.

23. After receiving Tayside Police's request that he do so, Mr Milne clarified his request for information on 18 July 2006. Tayside Police did not respond to Mr Milne's clarification.

24. Section 1(1) of FOISA makes it clear that a person who asks for information from a Scottish public authority which holds it is entitled to be given it by the authority. Section 1(3) of FOISA explains that if the authority requires further information in order to identify and locate the requested information and has told the applicant so, it is not obliged to give the requested information until it has the further information.

25. Tayside Police received a request for information from Mr Milne, and received adequate clarification of that request, in line with sections 1(1) and 1(3) of FOISA. They were obliged to provide Mr Milne with the information which he requested, or give him notice under section 17(1) of FOISA that they did not hold the information, within the time allowed by section 10(1) of FOISA.

26. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of a request to comply with the request for information. Where clarification of a request is sought, this period will begin at the point where that clarification is received. Tayside Police did not respond to Mr Milne's clarified request for information within the 20 working days allowed by FOISA. I am therefore satisfied that Tayside Police did not respond to Mr Milne's request for information within the timescale laid down in section 10(1) of FOISA.

27. Given the absence of any response to his clarified request for information, Mr Milne requested a review on 9 September 2006. Tayside Police responded to this correspondence in a letter dated 13 October 2006.

28. Section 21(1) of FOISA requires that on receipt of a request for review, an authority conduct a review and notify the applicant of the outcome no later than the 20th working day following the receipt of the request for review.

29. I have found that Tayside Police again failed to comply with Part 1 of FOISA and particularly the requirements of section 21(1) of FOISA.

30. While I am disappointed to note these further failures, I am aware that Tayside Police's response to Mr Milne's request for review acknowledged the failure to respond to his clarified request.

31. I do not require Tayside Police to take any steps in response to this decision.

Decision

I find that the Chief Constable of Tayside Police (Tayside Police) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Milne.

I have found that Tayside Police acted in accordance with Part 1 of FOISA by giving notice to Mr Milne under section 17 of FOISA that they did not hold any information relating to his request.

However, I have found that Tayside Police failed to act in accordance with Part 1 of FOISA by failing to provide a response to Mr Milne's clarified information request within the timescales required by section 10(1) of FOISA, or to his request for review within the timescale required by section 21(1) of FOISA. I do not require Tayside Police to take any action in response to these technical breaches.

Appeal

Should either Mr Milne or Tayside Police 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 of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
13 August 2007

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.

(…)

(3) If the authority –

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

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-

(a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

(b) in a case where section 1(3) applies, the receipt by it of the further information.

(…)

17. Notice that information is not held

(1) Where-

(a) a Scottish public authority receives a request which would require it either-

(i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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.