

Decision Notice

Decision 052/2017: Mr Paul Hutcheon and the Chief Constable of the Police Service of Scotland

Undercover Policing: failure to respond within statutory timescales

Reference No: 201700491
Decision Date: 06 April 2017



Summary

The Chief Constable of the Police Service of Scotland (Police Scotland) was asked for various information regarding the Pitchford Inquiry and undercover policing issues. Police Scotland was also asked for the names of officers who received temporary promotion to the rank of Chief Superintendent and above.

This decision finds that Police Scotland failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that Police Scotland failed to comply with Mr Hutcheon's requirement for review within the timescale set down by FOISA.

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

Background

| Date | Action |
|------------------|---|
| 5 December 2016 | Mr Hutcheon made an information request to Police Scotland. |
| 25 January 2017 | Mr Hutcheon wrote to Police Scotland requiring a review of their failure to respond. |
| 23 February 2017 | Although Mr Hutcheon was provided with an update and an apology for the delay in providing a response to his request, Police Scotland did not respond to his information request. |
| 14 March 2017 | Mr Hutcheon wrote to the Commissioner's Office, stating that he was dissatisfied with Police Scotland's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 24 March 2017 | Police Scotland was notified in writing that an application had been received from Mr Hutcheon and was invited to comment on the application. |
| 31 March 2017 | The Commissioner received submissions from Police Scotland. These submissions are considered below. |

Commissioner's analysis and findings

1. Police Scotland confirmed that they had received Mr Hutcheon's request and requirement for review, but due to the absence of key officers, had not responded to him.
2. Police Scotland confirmed that a meeting is due to take place to review the paperwork, to check what information can be disclosed. Police Scotland explained that the officer involved in this request was away on police business, but would follow this up on their return. They considered this was an exceptional request, involving contact with a number of individuals and departments to obtain the requested information. However, Police Scotland recognised that this is not the level of service expected from them.

3. Police Scotland accepted that they failed to respond as required by FOISA and confirmed that Mr Hutcheon will be provided with an update and an apology.
4. 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.
5. It is a matter of fact that Police Scotland did not provide a response to Mr Hutcheon's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
6. 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.
7. It is a matter of fact that Police Scotland did not provide a response to Mr Hutcheon's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
8. 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 Police Scotland failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

Decision

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

The Commissioner requires Police Scotland to provide a response to Mr Hutcheon's request for review, by **Monday 22 May 2017**.

Appeal

Should either Mr Hutcheon or the Chief Constable of the Police Service of Scotland 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

If the Chief Constable of the Police Service of Scotland (Police Scotland) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Police Scotland has failed to comply. The Court has the right to inquire into the matter and may deal with Police Scotland as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

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