

# Decision Notice

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## **Decision 183/2017: Ms Hawa Hersi and the Chief Constable of the Police Service of Scotland**

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### **Video surveillance: failure to respond within statutory timescales**

Reference No: 201701528

Decision Date: 07 November 2017



Scottish Information  
Commissioner

## Summary

Police Scotland were asked for information about crimes reported on video surveillance. This decision finds that Police Scotland failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that Police Scotland did not respond to the request in terms of FOISA.

## Background

Date	Action
15 May 2017	Ms Hersi made an information request to Police Scotland.
22 May 2017	Police Scotland responded to Ms Hersi, but only in terms of the Data Protection Act 1998 (the DPA): it treated the request, in its entirety, as a subject access request in terms of section 7 of the DPA.
24 July 2017	Ms Hersi wrote to Police Scotland, requiring a review of their decision not to respond to the request in terms of FOISA. The requirement for review stated clearly that she was seeking to pursue her rights in terms of FOISA.
26 July 2017	Police Scotland responded to Ms Hersi's letter of 24 July 2017. They reiterated that Ms Hersi had made a request under the DPA, confirming that they did not consider it to be a request for information under FOISA. They declined to carry out a review, stating that this was not a right which was available under the DPA.
12 August 2017	Ms Hersi wrote to the Commissioner's Office, stating that she 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.
5 October 2017	Police Scotland was notified in writing that an application had been received from Ms Hersi and was invited to comment on the application.
16 October 2017	The Commissioner received submissions from Police Scotland. These submissions are considered below.

## Commissioner's analysis and findings

1. The Commissioner has considered Ms Hersi's letter of 15 May 2017 carefully. On the face of it, there would appear to be no basis for characterising all of the information requested as Ms Hersi's own personal data, even if parts of it may fit that description. The letter meets the requirements for a request for information under section 1(1) of FOISA. Even if that was not apparent at the outset (and the Commissioner considers it should have been), Ms Hersi's requirement for review makes it perfectly clear that she is seeking to pursue her rights under FOISA. It should have been readily apparent to Police Scotland that they were required to respond on that basis, under FOISA.

2. 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.
3. It is a matter of fact that Police Scotland did not provide a response to Ms Hersi's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
4. 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.
5. It is a matter of fact that Police Scotland did not provide a response to Ms Hersi's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
6. Police Scotland acknowledged that they should have responded to Ms Hersi's request and requirement for review under FOISA. They acknowledged that their failure to do so was an error which should have been picked up earlier.
7. Police Scotland confirmed that a response was issued to Ms Hersi on 17 October 2017, so the Commissioner does not require them to take any further action in relation to Ms Hersi's application. The Commissioner was provided with a copy of the response.
8. The Commissioner notes that Police Scotland have apologised to Ms Hersi for their failure to respond in terms of FOISA.

## Decision

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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 Ms Hersi. In particular, Police Scotland failed to respond to Ms Hersi'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 Police Scotland to take any action in respect of these failures in response to Ms Hersi's application, given that a response has now been issued.

## **Appeal**

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Should either Ms Hersi 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**07 November 2017**

**Scottish Information Commissioner**

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