

Decision Notice

Decision 122/2018: Mr E and the Chief Constable of the Police Service of Scotland

Co-operation with broadcaster: failure to respond within statutory timescales

Reference No: 201801166

Decision Date: 13 August 2018



Scottish Information
Commissioner

Summary

Police Scotland were asked for information about the co-operation they had provided to the makers and producers of a television programme.

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 the 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
21 April 2018	Mr E made an information request to the Chief Constable of the Police Service of Scotland (Police Scotland).
24 May 2018	Police Scotland wrote to Mr E and apologised for being unable to respond to his request within the time allowed. They did not respond to the information request.
2 June 2018	Mr E wrote to Police Scotland, requiring a review in respect of their failure to respond.
	Mr E did not receive a response to his requirement for review.
9 July 2018	Mr E 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.
25 July 2018	Police Scotland were notified in writing that an application had been received from Mr E and were invited to comment on the application.
8 August 2018	The Commissioner received submissions from Police Scotland. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, Police Scotland acknowledged and apologised that they had not responded to Mr E's request or requirement for review.
2. Police Scotland notified the Commissioner that they were actively working on responding to Mr E's requirement for review, as a priority.
3. 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.

4. It is a matter of fact that Police Scotland did not provide a response to Mr E's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
5. 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.
6. It is a matter of fact that Police Scotland did not provide a response to Mr E's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
7. 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: he now requires a review to be carried out in accordance with section 21.
8. The Commissioner recommends that Police Scotland consider whether it would be appropriate to apologise to Mr E for their failure to comply.

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 E. In particular, Police Scotland failed to respond to Mr E'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 Mr E with a response to his requirement for review by 27 September 2018.

Appeal

Should either Mr E or Police 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 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 they had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

13 August 2018

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