

Decision Notice

Decision 129/2018: Mr T and the Chief Constable of the Police Service of Scotland

Retirement age of support staff: failure to respond within statutory timescales

Reference No: 201801094

Decision Date: 23 August 2018



Summary

The Chief Constable of the Police Service of Scotland (Police Scotland) was asked how many support staff of the SPA (Scottish Police Authority) and PSoS (Police Service of Scotland) are working beyond the normal retirement age/state pension age and are members of the Local Government Pension Scheme (LGPS).

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).

Background

Date	Action
7 March 2018	Mr T made an information request to Police Scotland.
23 May 2018	Police Scotland responded to the information request.
24 May 2018	Mr T wrote to Police Scotland requiring a review of their decision.
21 June 2018	Mr T did not receive a response, so he sent a reminder to Police Scotland.
22 June 2018	Although Police Scotland sent Mr T an acknowledgement and an apology for the delay, he did not receive a response to his requirement for review.
27 June 2018	Mr T wrote to the Commissioner's Office, stating that he was dissatisfied with Police Scotland's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
24 July 2018	After applying to the Commissioner Mr T confirmed to the Commissioner's office that he had received the outcome of the review, but wished to continue with an investigation into the late responses.
26 July 2018	Police Scotland were notified in writing that an application had been received from Mr T 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. 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.
2. It is a matter of fact that Police Scotland did not provide a response to Mr T's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA.
3. 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.

4. It is a matter of fact that Police Scotland did not provide a response to Mr T's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
5. Police Scotland acknowledged that they had failed to respond in time to both the information request and requirement for review.
6. In an email to Mr T dated 22 June 2018, Police Scotland explained that further information was required from relevant business functions in order to formulate a conclusive response to the request. They explained that it was unlikely that this information would be received that day, so would not be able to provide Mr T with a response in time. The Commissioner notes that Police Scotland apologised for this failure.
7. In their submissions to the Commissioner, Police Scotland stated that another reason for the delay in responding to Mr T's request was because it had taken longer than anticipated to obtain the required information from legacy payroll departments and various local councils.
8. Police Scotland confirmed that a review response was sent to Mr T on 23 July 2018. The Commissioner was provided with a copy of it. Given that a review response has now been issued, the Commissioner does not require any further action to be taken in relation to Mr T's application.
9. The Commissioner notes that Police Scotland offered a further apology in their review response regarding their failure to respond in time.

Decision

The Commissioner finds that 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 T. In particular, Police Scotland failed to respond to Mr T's request 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 Mr T's application, given that a response has now been issued.

Appeal

Should either Mr T or Chief Constable of the Police Service of Scotland (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.

Alison Davies
Deputy Head of Enforcement

23 August 2018

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