



Scottish Information  
Commissioner  
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# Decision Notice 091/2024

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## Police custody – failure to respond

**Applicant: The Applicant**

**Authority: Chief Constable of the Police Service of Scotland**

**Case Ref: 202400441**

### Summary

The Applicant asked the Authority for information about events relating to time spent in police custody. This decision finds that the Authority failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the Authority failed to comply with the Applicant's requirement for review within the timescale set down by FOISA.

### Background

1. The Applicant made an information request to the Authority on 6 November 2023.
2. The Authority did not respond to the information request.
3. On 2 January 2024, the Applicant wrote to the Authority in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

### Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 4 April 2024.
8. The Commissioner received submissions from the Authority. These submissions are considered below.
9. The Authority explained that the request and requirement for review had been addressed to a Chief Inspector who had not recognised that they were information requests. As a result, the correspondence had been mistakenly forwarded to the Authority's Professional Standards Department (PSD) as it had been thought to relate to a complaint made by the Applicant.
10. Both the Chief Inspector and the PSD have been provided with advice on recognising information requests to ensure that they are passed to the FOI unit for processing within FOISA timescales.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. 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.
14. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review.
16. The Authority responded to the Applicant's requirement for review on 18 April 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
17. The Commissioner notes that the review response contains an apology for the Authority's failure to handle the request in accordance with FOISA and for any inconvenience caused.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

## **Appeal**

Should either the Applicant or the Authority 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.

**Cal Richardson**  
**Deputy Head of Enforcement**

**15 May 2024**