

Decision Notice 061/2021

Kittybrewster custody centre

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202001407



Scottish Information
Commissioner

Summary

Police Scotland were asked about video recording equipment and detainee conditions at Kittybrewster custody centre. Police Scotland initially refused to comply with the request on the basis that it was vexatious.

The Commissioner investigated and found that the review carried out by Police Scotland had failed to comply fully with FOISA. He required them to conduct a fresh review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General Entitlement); 14(1) (Vexatious or repeated requests); 21(1), (4) and (5) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Both Appendices form part of this decision.

Background

1. On 25 February 2020, a request for information was made on behalf of the Applicant to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested related to an issue identified with the CCTV system in the Kittybrewster custody facility shortly after it became operational on 24 June 2014. The Applicant's 20-part request is reproduced in full in Appendix 2 to this decision.
2. Police Scotland responded on 24 March 2020. They stated that the information requested had been previously requested from Police Scotland by "a third party" (i.e. the Applicant) more than three years ago in 2014 and 2015. They said that, in another information request, the Applicant had asked for copies of the specific responses and had been told that, in accordance with retention policies, information requests and responses were disposed of after the current plus three years.
3. Police Scotland therefore refused to comply with the request on the basis that it was vexatious. Police Scotland stated that they had, over many years, provided the Applicant with information on this subject matter, and yet the same questions continued to be posed periodically by the Applicant. The intention of the present request, Police Scotland concluded, was to harass them and/or cause annoyance and disruption. For reference, Police Scotland attached previous related information responses and said that these were in respect of parts 1-11 of the request. For the remaining part of the request, parts 12-20, Police Scotland, provided a link to information on Police Standard Operating Procedure (SOP) – "Care and Welfare of Persons on Police Custody"¹) and link to statistical information on complaints².
4. The Applicant wrote to Police Scotland later on the same day, requesting a review of their decision. The Applicant requested a review on the basis that the information previously

¹ <https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>

² <https://www.scotland.police.uk/about-us/police-scotland/complaints-about-the-police/professional-standards-reports-and-data>

supplied by Police Scotland was on a memory stick which had been disposed of by mistake and therefore the Applicant does not have a copy.

5. On 17 April 2020, the Applicant again wrote to Police Scotland and stated that they had not conducted a review within the timescale required by FOISA.
6. Police Scotland notified the Applicant of the outcome of their review on 8 June 2020. (In April and May 2020, the Coronavirus (Scotland) Act 2020 extended the maximum timescales for responding to requests and requests for review to 60 working days instead of the usual 20 working days.)
7. Police Scotland stated that the review was to decide whether or not section 14(1) of FOISA had been correctly applied. They said that their review decision “has been influenced by the passage of time.” Police Scotland noted that their previous information responses to the Applicant were enclosed, and that these “address some of the salient points raised” in parts 1-11. Information was referred to that had been destroyed from Police Scotland’s mainframe system in line with records retention. Also, in reviewing the request, Police Scotland had located a historical email exchange between them and the Commissioner and provided the Applicant with a copy on the understanding that it answered a number of the questions he had asked.
8. For parts 12-20 of the request, Police Scotland said that FOISA only extended to the provision of recorded information and they therefore could not comment on what “normal procedure” might be, other than where that procedure is specifically recorded, for example in a procedural document. They provided some weblinks (SOP - Care and Welfare of Persons in Police Custody³ and a link to statistical information regarding complaints against the police. Police Scotland concluded that “this is all the information held.”
9. On 25 November 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of Police Scotland’s review: he repeated that he no longer had copies of responses to earlier information requests.

Investigation

10. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and to answer specific questions. These questions related to Police Scotland’s review.
12. Police Scotland acknowledged that aspects of their review were not entirely clear: this is discussed in more detail below. They asked, nevertheless, if the Applicant would be agreeable to clarifying which of the 20 questions in his request he felt remain unanswered following the review outcome in order to progress the application. The Applicant stated that he felt none of the 20 questions had been addressed.

³ <https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>
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Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.
14. Police Scotland's submissions to the Commissioner explained their initial response and review in detail. They did, however, acknowledge that aspects of their review could have been set out in clearer terms. In particular, Police Scotland acknowledged that it was not entirely clear what the outcome of the review was in terms of the applicability or otherwise of section 14 of FOISA. Similarly, Police Scotland noted that the review response was an "amended response" but had not addressed individually the questions posed, and that the only amendment was to include copies of further historic information for reference. They also acknowledged that their responses had not been addressed to the Applicant, albeit that he had received them as the request had been made on his behalf.
15. Police Scotland suggested that what would best progress the Applicant's application was a comparison between the questions posed in this information request and previous information requests by the Applicant, which had been located at review.
16. Section 21 of FOISA sets out the requirements to be followed by a Scottish public authority in carrying out a review. While Police Scotland's review does in some aspects comply with section 21 of FOISA, it does not – as acknowledged by Police Scotland themselves – comply in full. For example, the review outcome does not fully address each element of the request or make it clear which, if any, of the provision(s) in Parts 1 and 2 of FOISA Police Scotland is relying on in relation to the requests.
17. The Commissioner therefore requires Police Scotland to issue a new review addressing the Applicant's dissatisfaction in his request for review.
18. Given the above, in this decision, the Commissioner will come to no conclusion on the points submitted by Police Scotland to him on each of the aspects of the Applicant's 20-part request.

Decision

The Commissioner finds that the review carried out by the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply in full with section 21 of the Freedom of Information (Scotland) Act 2002 (FOISA). This was a breach of Part 1 of FOISA.

The Commissioner therefore requires Police Scotland to conduct a further review and communicate it to the Applicant, in line with section 21(5) of FOISA, by 15 June 2021.

Appeal

Should either the Applicant 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 have 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.

Margaret Keyse
Head of Enforcement

30 April 2021

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.

- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

Appendix 2: Text of Applicant's request of 25 February 2020

- 1 What date did the equipment cease to retain/store footage.
- 2 The untimely death of a detainee went unrecorded, was the mans (sic) family made aware of the faulty equipment.
- 3 Was PIRC made aware of the faulty equipment prior to investigations.
- 4 Was the CPS notified of the faulty equipment.
- 5 Was Her Majesty's Inspectorate made aware that equipment failed to retain a death.
- 6 When was it noticed that the equipment had failed to retain footage.
- 7 When was it repaired by the installer.
- 8 Was the equipment tried and tested prior to being passed fit for use
- 9 Was the test signed off as per contract procedure. If so did an investigation take place. If not did an investigation take place.
- 10 What was the reason for failure of retention.
- 11 What reason was given for automatic back up system to fail.
- 12 How many complaints have been raised regarding the treatment to detainees in Kittybrewster.
- 13 Is it normal procedure to have several custody records, all with different times and entries pertaining to one detainee, over a 24 hour period. How many complaints have been made.
- 14 Is it normal to have copies of the police surgeons (sic) personal notes and medical records of a detainee. How many complaints have been made.
- 15 Would it be normal procedure to lock a detainee in a 4x4 transport cell, although the man suffers from Claustrophobia.
- 16 How many times has medical treatment been refused to be given to a detainee, by officers of Kittybrewster.
- 17 Has there ever been misleading / false information knowingly recorded on a detainees (sic) custody records.
- 18 Has there been an instance when one custody record, has recorded the detainee "violent", yet another for the same detention period and same person, states "not violent".
- 19 How many times has a disabled person been detained, and having his walking aides removed so that he can neither stand upright or walk without pain.
- 20 How many complaints have been made because allergies were not recorded on the custody record.

Scottish Information Commissioner

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