

Decision Notice

Decision 086/2015: Mr Andrew Picken and the Chief Constable of the Police Service of Scotland

Recording and classifying crimes: failure to respond within statutory timescales

Reference No: 201500827

Decision Date: 18 June 2015



Scottish Information
Commissioner

Summary

On 24 February 2015, Mr Picken asked the Chief Constable of the Police Service of Scotland (Police Scotland) for information contained in internal reports relating to recording and classifying crimes. 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 Mr Picken's 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
24 February 2015	Mr Picken made an information request to Police Scotland.
	Police Scotland did not respond to the information request.
31 March 2015	Mr Picken wrote to Police Scotland, requiring a review in respect of their failure to respond.
	Mr Picken did not receive a response to his requirement for review.
5 May 2015	Mr Picken 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.
29 May 2015	Police Scotland were notified in writing that an application had been received from Mr Picken and were invited to comment on the application.
17 June 2015	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 Picken'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 Picken'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 to Mr Picken's request and requirement for review within the statutory timescales, and confirmed a response would be sent to Mr Picken. This had not been done by the time of this decision.
6. 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: she now requires a review to be carried out in accordance with section 21.

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 Picken. In particular, Police Scotland failed to respond to Mr Picken'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 a response to Mr Picken's requirement for review, in accordance with section 21 of FOISA, by **4 August 2015**.

Appeal

Should either Mr Picken 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.

Euan McCulloch
Deputy Head of Enforcement

18 June 2015

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