

Decision Notice

Decision 095/2017: Mr Andrew McKinnon and the Chief Constable of the Police Scotland

Processing time for a shotgun certificate grant

Reference No: 201700515

Decision Date: 20 June 2017



Scottish Information
Commissioner

Summary

Police Scotland were asked how long it takes to process a shotgun certificate grant.

Police Scotland informed Mr McKinnon that they did not hold this information. Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

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

Background

1. On 5 January 2017, Mr McKinnon made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). Mr McKinnon asked for the processing time for a shotgun certificate grant.
2. On 6 February 2017, Police Scotland explained that they aim to process grant applications within 16 weeks. However, there are occasions when further enquiries are required to establish the applicant's suitability. They were therefore unable to provide a standard timescale for each application.
3. On 14 February 2017, Mr McKinnon emailed Police Scotland requesting a review of their decision. He wanted to know how long the "further enquiries" could take.
4. Police Scotland notified Mr McKinnon of the outcome of their review on 15 March 2017. They explained that there was no recorded information to show how long further enquiries could take, and upheld their decision to give notice, in line with section 17 of FOISA, that they did not hold the information he had requested.
5. On 16 March 2017, Mr McKinnon applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr McKinnon stated he was unhappy with the response, as he considered that the information he required should be held and Police Scotland had its reasons for not disclosing the information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr McKinnon made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.

7. On 28 March 2017, Police Scotland were notified in writing that Mr McKinnon had made a valid application and the case was allocated to an investigating officer.
8. 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 answer specific questions. Police Scotland were asked to describe, in detail, the searches they had undertaken to establish whether they held any information covered by Mr McKinnon's request.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr McKinnon and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Information held by Police Scotland

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

Police Scotland's submissions

12. Police Scotland explained that the administrative process for issuing a shotgun certificate after receipt of the application is based on a 16 week process. Dependent on the length of the enquiries required in each case, this can be a significantly shorter period. Where it exceeds 16 weeks, this would be discussed with Firearms and Explosive Licensing management to ensure that any delays are kept to a minimum and that the enquiry is proportionate and pertinent to the individual circumstances of the individual making the application.

The process of granting a shotgun certificate

13. In explaining why they do not record the actual time taken to process a shotgun application, Police Scotland referred to section 28(1A) of the Firearms Act 1968¹ (the 1968 Act), which provides that no shotgun certificate shall be granted or renewed, if the police have reason to believe that the applicant is prohibited from possessing a shot gun or are satisfied that the applicant does not have a good reason for possessing, purchasing or acquiring one.
14. Police Scotland explained that decisions on applications must be made on an assessment of all the relevant information and on the individual merits of each case. Though a 16 week process is worked towards in terms of enquiry, decision and administrative completion, there is ultimately no restriction on the timescales required to gain a full picture of the applicant so that a truly informed decision can be made as to someone's suitability.

¹ <http://www.legislation.gov.uk/ukpga/1968/27/section/28>

15. Police Scotland explained that further enquiries may include, but are not exclusive to, medical reports, witness statements, completion of criminal proceedings etc. In this respect, a specific timescale cannot be provided as to how long further enquiries may take.
16. Police Scotland provided additional background information about the process of considering a shotgun certificate application. They explained that following receipt of an application, a notification is sent to the Criminal History System (CHS) so that a marker is attached to the applicant's details to note that they have submitted an application. Once an application is granted, the system is updated again to show what certificate(s) the individual possess. The system is also updated when a certificate has also been withdrawn, refused or revoked.
17. In 2015, a review of all firearms licensing administration tasks was undertaken and a 12 week target time was adopted from receipt of the application. This timescale was adopted to allow certificate holders an early opportunity to apply for certificate and ensure that the Police had the most time available by which to undertake the enquiry. This 12 week timescale was also adopted for grant applications.
18. In April 2016, a Home Office led process was adopted by all UK police forces which required the Police to make contact with the GP of both new applicants and existing certificate holders to ascertain if there were any medical concerns related to them. This process led to significant delays. To support individuals, particularly during grants and renewals, the 12 week target was increased to 16 weeks. This "alleviated pressure on the individual to deliver GP interaction within a restrictive timescale".
19. Police Scotland reiterated that there is no legal requirement to record the time taken to process a shotgun application.

The Commissioner's findings

20. In this case, the Commissioner must decide whether Police Scotland holds the information requested by Mr McKinnon.
21. The standard of proof to apply in determining whether a public authority holds the requested information is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the steps taken by the public authority to identify and locate the information in question. She will also consider, where appropriate, any other reason offered by the public authority to explain why it does not hold information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
22. The Commissioner has considered all the relevant submissions, including the explanations provided by Police Scotland. She is satisfied that Police Scotland has answered the questions raised in the investigation.
23. On the basis of the submissions provided, the Commissioner accepts that the 16 week target to process a shotgun certificate is simply a target, and that Police Scotland are not required to complete the process within that time or any other specified time, or to record the exact time taken to process a shotgun certificate.
24. The Commissioner is therefore satisfied that Police Scotland were correct to give Mr McKinnon notice, in terms of section 17(1) of FOISA, that they held no information falling within the scope his request.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr McKinnon.

Appeal

Should either Mr McKinnon 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.

Margaret Keyse
Acting Scottish Information Commissioner

20 June 2017

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.

...

17 Notice that information is not held

(1) Where-

(a) a Scottish public authority receives a request which would require it either-

(i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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