



Scottish Information  
Commissioner

**Decision 100/2006 – Mr Edward Milne and Chief  
Constable of Tayside Police**

*Request for information in relation to the use of a telephone  
tracking device or telephone tape recorder in respect of particular  
telephones*

**Applicant: Mr Edward Milne  
Authority: The Chief Constable of Tayside Police  
Case No: 200600875  
Decision Date: 20 June 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



**Decision 100/2006 – Mr Edward Milne and the Chief Constable of Tayside Police**

**Failure of the Chief Constable of Tayside Police to respond to a request for a review of its response to a request for information within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002.**

**Facts**

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1. On 11 February 2006, Mr Milne made an information request to the Chief Constable of Tayside Police (the Police) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In his letter, Mr Milne requested information in respect of all files and information relating to the use of a telephone tracking device or telephone tape recorder in relation to particular telephone numbers.
2. The Police wrote to Mr Milne on 21 February 2006 to acknowledge receipt of his request.
3. The Police responded to Mr Milne's request on 21 March 2006. In this response the Police indicated that they were relying on the terms of section 18 of FOISA in refusing to provide Mr Milne with the information he was seeking. By using section 18 of FOISA the Police were neither confirming nor denying that they held the information which Mr Milne was seeking. The Police also indicated in their response that if they did hold the information then they considered that it would be exempt under one or more of the following sections of FOISA; sections 28, 29, 30, 31, 32, 33, 34, 35, 39(1) and 41.
4. Mr Milne sent a letter to the Police on 24 March 2006, requesting that the Police carry out a review of their response to his request for information.
5. On 3 May 2006, Mr Milne applied to the Scottish Information Commissioner, requesting that he investigate the Police's refusal to respond to his request for review.
6. The Commissioner notified the Police of the application made by Mr Milne and invited its comments on 22 May 2006. The Police responded to this letter on 6 June 2006, confirming that Mr Milne did not receive an answer to his request for a review of the original decision.



7. In their response to the Commissioner, the Police recognised that they did not deal with Mr Milne's request for a review as they should have done and they confirmed that they are now arranging for Mr Milne's request to be progressed as a matter of urgency.

## **The Commissioner's Analysis and Findings**

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8. Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a Decision Notice to both the applicant and the public authority.
9. The Commissioner is satisfied that Mr Milne made a request for information to the Police on 11 February 2006 which was valid under the terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 24 March 2006.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the receipt of the request to comply with the request for information.
11. The Commissioner is satisfied that the Police did not respond to Mr Milne's request for information within the timescale laid down in section 10(1) of FOISA.
12. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
13. The Commissioner is satisfied that the Police did not respond to Mr Milne's requirement for review within the timescale laid down under section 21(1) of FOISA.

## **Decision**

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The Commissioner finds that the Chief Constable of Tayside Police (the Police) did not deal with Mr Milne's request for information in accordance with the requirements of Part 1 of FOISA in that they failed to comply with section 10(1) and section 21(1).



The Commissioner requires the Police to respond to Mr Milne's request for a review, by either confirming the decision complained of, with or without modifications as it considers appropriate, or substitute for that decision a different decision, within 42 days of receipt of this Decision Notice.

## **Appeal**

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Should either party wish to appeal this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

**Margaret Keyse**  
**Head of Investigations**  
**20 June 2006**