

Decision Notice



Decision 039/2012 Mr R and Central Scotland Police

Failure to comply with required timescale

Reference No: 201200273

Decision Date: 29 February 2012

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Margaret Keyse

Acting Scottish Information Commissioner

Kinburn Castle
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St Andrews KY16 9DS
Tel: 01334 464610



Summary

This decision considers whether the Chief Constable of Central Scotland Police (Central Scotland Police) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Mr R.

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.

Background

1. On 4 November 2011, Mr R wrote to Central Scotland Police requesting certain specified information.
2. Central Scotland Police responded on 30 November 2011, indicating that the requested information was not held.
3. On 6 December 2012, Mr R wrote to Central Scotland Police, requesting a review of their decision. In particular, he indicated that he had reason to believe the requested information to be held. Mr R transmitted his request for review by fax.
4. Central Scotland Police sent an acknowledgement to Mr R on 16 December 2011, in which they indicated that they had received his requirement for review on 15 December 2011.
5. A full response was provided to Mr R's requirement for review on 17 January 2012.
6. Mr R wrote to the Commissioner on 7 February 2012 stating that he was dissatisfied with Central Scotland Police's failure to respond timeously to his requirement for review of 6 December 2011 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr R had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

8. On 16 February 2012, Central Scotland Police were notified in writing that an application had been received from Mr R and were invited to comment on the application, as required by section 49(3)(a) of FOISA.
9. Central Scotland Police responded on 27 February 2012, acknowledging that they had failed in their duty under Part 1 of FOISA, in that they had not responded to Mr R's requirement for review within 20 working days.
10. Central Scotland Police confirmed that the Force Command Centre had received Mr R's requirement for review by fax on 6 December 2011, from where it was sent to the Business Services Unit for distribution to the Freedom of Information Officer.
11. It is normal practice, Central Scotland Police advised, for correspondence sent to the Business Services Unit to be scanned on the day it is received, to enable departments receiving correspondence to have access to it at the earliest opportunity in electronic format.
12. In this case, Central Scotland Police explained that the requirement for review received from Mr R was scanned on to the system on 6 December 2011. However, staff responsible for dealing with requests for information and associated reviews did not pick up that electronic communication. Instead, it appears that the request for review was identified when the paper copy was received via internal mail by the Freedom of Information Officer.
13. A response was then sent to Mr R on 17 January 2012, which Central Scotland Police state was, taking account of statutory holidays, 20 working days from 15 December 2011, rather than 6 December, the actual date of receipt.
14. Central Scotland Police fully accepted that the response to was not issued within the statutory timescale for review, as it response should have been sent out within 20 working days of the 6 December 2011. They apologised for their shortcomings in this respect. They also noted that the vast majority of freedom of information correspondence is received by email, and only a small number in writing. They undertook to ensure that staff receive appropriate training on the systems for dealing with such correspondence to prevent a recurrence of the failure in this case.

Commissioner's analysis and findings

15. 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, subject to certain exceptions which are not relevant in this case.



16. Since Central Scotland Police did not provide a response to Mr R's requirement for review within 20 working days of them receiving this, the Commissioner finds that they failed to comply with section 21(1) of FOISA.
17. Given that Central Scotland Police did provide a response to Mr R's requirement for review, albeit out with the 20 working day timescale, the Commissioner does not require it to take any further action in this case, in response to Mr R's application.
18. The Commissioner does however welcome the steps that Central Scotland Police intend to take to ensure that no similar breach occurs in future.

DECISION

The Commissioner finds that the Chief Constable of Central Scotland Police (Central Scotland Police) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr R, in particular by failing to respond to Mr R's requirement for review within the timescale laid down by section 21(1) of FOISA.

Given that Central Scotland Police did provide a response to Mr R's requirement for review, the Commissioner does not require Central Scotland Police to take any action in response to this failure.

Appeal

Should either Mr R or the Chief Constable of Central Scotland Police wish to appeal against 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 after the date of intimation of this decision notice.

Claire Sigsworth
Deputy Head of Enforcement
29 February 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

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