

Decision 203/2007 Mr W and the Chief Constable of Tayside Police

Request for answer to previous request in relation to an alleged speeding offence

Applicant: Mr W

Authority: Chief Constable of Tayside Police

Case No: 200701157

Decision Date: 30 October 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 203/2007 Mr W and the Chief Constable of Tayside Police

Request for answers to questions asked and responded to previously in relation to an alleged speeding offence – request refused under section 14(2) of FOISA (Vexatious or repeated requests)

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 14(2) (Vexatious or repeated requests).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr W requested that the Chief Constable of Tayside Police (Tayside Police) answer certain questions he had asked (and Tayside Police had responded to) previously. Tayside Police responded by refusing this part of the request under section 14(2) of FOISA on the basis that this was a repeated request. Tayside Police responded to the second part of Mr W's request by providing Mr W with a copy of the calibration certificate for a speed camera. Following a review which upheld the original position taken by Tayside Police, Mr W remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Tayside Police had dealt with Mr W's request for information in accordance with Part 1 of FOISA. He did not require Tayside Police to take any action.



Background

1. On 23 March 2007, Mr W wrote to Tayside Police requesting answers to: “the same questions that you answered in your letter dated 27/06/2006... plus information regarding the supply of a copy of the calibration certificate”. This related to an alleged speeding offence.
2. On 2 May 2007, Tayside Police responded by refusing the first part of the request under section 14(2) of FOISA on the basis that this current request was a repeat of a previous request made by Mr W on 26 April 2006 (and responded to by Tayside Police on 27 June 2006.)
3. Tayside Police responded to the second part of the request by providing Mr W with a copy of the calibration certificate for the speed camera in question. Tayside Police also clarified some points in relation to its earlier response of 27 June 2006.
4. On 4 May 2007, Mr W wrote to Tayside Police requesting a review of its decision. In particular, Mr W questioned whether his request should be considered to be a repeat request and whether he had seen a calibration certificate prior to his request.
5. On 2 June 2007, Tayside Police wrote to notify Mr W of the outcome of its review. Tayside Police stated (in addition to responding to other points raised by Mr W) that it still considered Mr W’s request to be a repeat request, and that it had provided the copy of the calibration certificate to be helpful.
6. On 23 August 2007, Mr W wrote to my Office, stating that he was dissatisfied with the outcome of Tayside Police’s review and applying to me for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr W had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. Tayside Police was advised that the application was valid and the case was allocated to an investigating officer.



The Investigation

8. On 19 September 2007, the investigating officer wrote to Tayside Police, seeking its comments on the application and certain items of information required for the purposes of the investigation. He was also in contact with the applicant in the course of the investigation.
9. Although other points were raised with me in Mr W's correspondence, the only matters I was empowered to investigate under FOISA were:-
 - a) Mr W's request for information, dated 2 March 2007 and Tayside Police's assertion that this was a repeat of Mr W's previous request, dated 26 April 2006.
 - b) Whether Tayside Police's interpretation of point two of the request (in relation to calibration certificates) was a reasonable and valid response to that point under FOISA.

This was made clear to Mr W at an early stage in the investigation.

Submissions by Tayside Police

10. Tayside Police advised that it had considered Mr W's request but felt, given that he had himself requested that the police answer the same questions he had raised previously, it could not regard that part of the request as anything *other* than a repeated request.
11. Tayside Police added that a number of the points raised by Mr W in his 2006 request were not, strictly speaking, requests under FOISA. They were, Tayside Police contended, requests for comment and opinion.
12. Tayside Police further submitted that it considered it appropriate to consider the present request as a repeated request given that nothing in the information requested had changed between the 2006 and 2007 requests.
13. In relation to the second point in Mr W's request of 23 March 2007, Tayside Police submitted that it had considered it reasonable and valid to interpret that point as a request for the calibration certificate.



Submissions from Mr W

14. Mr W made numerous submissions to my office. Not all of these related to matters within my remit.
15. However, Mr W submitted that, as his 2006 request was not specifically made under the terms of FOISA, it should not have responded in terms of FOISA. Therefore, he questioned validity of the Tayside Police response to that request under FOISA and, by extension, whether his present request of 23 March 2007 could be considered to be a repeat request.
16. Mr W also submitted that his second point, regarding calibration certificates, was intended to cover more than merely Tayside Police providing a copy of certificate for the camera in question.

The Commissioner's Analysis and Findings

17. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by Mr W and Tayside Police and I am satisfied that no matter of relevance has been overlooked.

Section 14 (Vexatious or repeated requests)

18. Section 14(2) of FOISA states that a Scottish public authority not obliged to comply with a subsequent request from a person where it has complied with a request which is identical or substantially similar, unless there has been a reasonable period of time between the request complied with and the subsequent request.
19. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA (the Section 60 Code), notes in paragraph 25 "if the information has changed between applications, this is unlikely to be viewed as a repeated request" and that "what constitutes a 'reasonable period of time' will depend on the circumstances of the case" but that "authorities should be prepared to justify their reasoning to the Commissioner."
20. I am satisfied on the basis of the submissions provided to me that Tayside Police adequately considered the first part of Mr W's request in terms of section 14(2) of FOISA and paragraph 25 of the Code.



21. I am satisfied that Mr W's request of 3 March 2007 (that Tayside Police answer the same questions as it answered in its letter of 27 June 2006) could only reasonably be interpreted as a repeated request. The request asks Tayside Police, under FOISA, to respond again to a number of questions asked in a previous request. While I note Mr W's assertion that his earlier request was not made under FOISA, it is clear from paragraph 9 of his letter of 26 April 2006 that it was. In any event, there is nothing in section 1(1) of FOISA which requires a request for information under that section to make specific reference to FOISA and it is perfectly normal for a valid such request to be silent on the matter. While I accept (as Tayside Police has argued) that the remainder of the points made in the 26 April 2006 letter could not reasonably be so interpreted, in my opinion it would have been wholly unreasonable for a Scottish public authority in receipt of the first numbered point in that letter to interpret it other than as a request for information under section 1(1).
22. I am also satisfied that the Tayside Police response to Mr W of 27 June 2006 was clearly made under Part 1 of FOISA, that Mr W in turn responded to that letter by seeking a review under FOISA, and that Tayside Police then (quite properly, in my opinion) dealt with Mr W's request for review accordingly. There does not appear to me to be any ambiguity as to whether the earlier request was, or should have been, dealt with under FOISA.
23. On 23 March 2007, Mr W made what was to all intents and purposes the same request for information as he made on 26 April 2006 and which was dealt with under Part 1 of FOISA at that time. From the submissions which have been made to me (and considering the nature of the information requested), I am satisfied that there is no reason for regarding the information requested as having changed in the interim and, in all the circumstances, I do not consider that a reasonable period passed between the first and second requests.
24. In all the circumstances, therefore, I am satisfied that Tayside Police acted correctly in dealing with the first part of Mr W's request of 23 March 2007 as a repeated request in terms of section 14(2) of FOISA.

Tayside Police's interpretation of the second part of Mr W's request

25. Mr W disputed Tayside Police's interpretation of the second part of his request which related to calibration certificates for speed cameras.
26. Mr W's request was for "information regarding the supply of a copy of the calibration certificate". Tayside Police interpreted this as a request for the calibration certificate for the camera which recorded the alleged speeding offence and supplied a copy accordingly.



27. Mr W's contention that he intended a somewhat different interpretation than mere provision of the calibration certificate. He has raised a number of issues in this connection, including the training of the officers concerned. Not all of these could reasonably be interpreted as seeking information under FOISA, and even where they do I cannot accept that the information sought would come within a reasonable interpretation of the second part of his request. In all the circumstances, therefore, I accept that the provision of a calibration certificate was a reasonable and appropriate response to the second part of Mr W's request.

Decision

I find that the Chief Constable of Tayside Police acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the first part of Mr W's request by serving him a notice under section 14(2) of FOISA.

I find that Tayside Police's interpretation of and response to the second part of Mr W's request was reasonable and appropriate in terms of Part 1 of FOISA, and that no breach of Part 1 occurred in the handling of this part of the request.

Appeal

Should either Mr W or the Chief Constable of Tayside 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.

Kevin Dunion
Scottish Information Commissioner
30 October 2007



Appendix

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.

14 Vexatious or repeated requests

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.