

Decision Notice

Decision 243/2016: The Applicant and the Crown Office and Procurator Fiscal Service

Employment of non-Caucasian persons: failure to respond within statutory timescales

Reference No: 201601953

Decision Date: 10 November 2016



Summary

The Crown Office and Procurator Fiscal Service (COPFS) was asked for information about the employment of non-Caucasian employees at COPFS. This decision finds that COPFS failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that COPFS failed to comply with a requirement for review within the timescale set down by FOISA.

The Commissioner has ordered COPFS to comply with the requirement for review.

Background

Date	Action
6 July 2016	The Applicant made an information request to COPFS.
	COPFS did not respond to the information request.
18 August 2016	The Applicant wrote to COPFS requiring a review of its failure to respond.
	The Applicant did not receive a response to her requirement for review.
24 October 2016	The Applicant wrote to the Commissioner's Office, stating that she was dissatisfied with COPFS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
31 October 2016	COPFS was notified in writing that an application had been received from The Applicant and was invited to comment on the application.
2 November 2016	The Commissioner received submissions from COPFS. 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 COPFS did not provide a response to the applicant's request for information within 20 working days, so the Commissioner finds that it 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 COPFS did not provide a response to the applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. COPFS confirmed that it had received the applicant's request and requirement for review. It explained that although the applicant had used the correct email address, its IT systems had treated her emails as 'spam' and stored them in the 'spam' folder. COPFS explained that it was unaware of the existence of these emails until the Commissioner had been in contact. COPFS noted that it had received a large number of emails from the applicant over a short period of time.
6. COPFS has confirmed that all mail from the applicant's email account will now be forwarded to the 'Response and Information Unit' when her emails are received. The Commissioner welcomes the steps taken by COPFS.
7. COPFS also confirmed that a response will be issued to the applicant. This had not been done at the time of this decision.
8. 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 COPFS failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21 of FOISA.

Decision

The Commissioner finds that the Crown Office and Procurator Fiscal Service (COPFS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the applicant. In particular, COPFS failed to respond to the applicant'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 COPFS to provide a response to the applicant's requirement for review, by **28 December 2016**.

Appeal

Should either the applicant or the Crown Office and Procurator Fiscal Service 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 Crown Office and Procurator Fiscal Service (COPFS) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that COPFS has failed to comply. The Court has the right to inquire into the matter and may deal with COPFS as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

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