



Scottish Information
Commissioner

**Decision 193/2006 – Peter & Colleen Petersen and
the Chief Constable of Grampian Police**

Request for a copy of a policy document

**Applicant: Peter & Colleen Petersen
Authority: Chief Constable of Grampian Police
Case No: 200502053
Decision Date: 30 October 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 193/2006 – Peter & Colleen Petersen and the Chief Constable of Grampian Police Force

Request for a copy of policy document that details the criteria and procedures for concerns being investigated by a Police Force other than Grampian Police – whether the information is held for the purposes of the Freedom of Information (Scotland) Act 2002 by Grampian Police - information not held – No response to request for review.

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 section 1(1) (General entitlement); section 14(1) (Vexatious requests); section 17(1) (Notice that information is not held); sections 20(1) and (3) (Requirement for review of refusal etc.) and section 21(1) (Review by Scottish public authority).

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 and Mrs Petersen requested a copy of a policy document that details the criteria and procedures for concerns being investigated by a Police Force other than Grampian Police. The Chief Constable of Grampian Police (the Police) responded to Mr and Mrs Petersen, citing section 17(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA), i.e. that the information was not held by that authority. The Police did not identify the applicants' subsequent correspondence as a requirement for review and subsequently failed to respond to that request for review in terms of section 20(1) of FOISA.

Following an investigation, the Commissioner found that the information was not held by the Police. The Commissioner found that the Police dealt with Mr and Mrs Petersen's request for information in accordance with Part 1 of FOISA, in that it applied section 17(1)(b) of FOISA correctly.

However, the Commissioner also found that the Police failed to deal with Mr and Mrs Petersen's request for review in accordance with Part 1 of FOISA, in that it failed to



respond to the request for review within the twenty working days set down in section 21(1) FOISA.

Background

1. On 22 February 2005, Mr and Mrs Petersen applied to the Police for a copy of the Grampian Police policy that details the criteria and procedures for concerns being investigated by a Police Force other than Grampian Police.
2. On 11 March 2005, the Police issued Mr and Mrs Petersen with a notice in terms of section 17(1)(b) of FOISA, stating that there was no policy document and therefore the information could not be provided. However, the Police advised Mr and Mrs Petersen that the decision concerning whether another Police Force should be asked to investigate any matter relating to Grampian Police would be taken by the Deputy Chief Constable.
3. Mr and Mrs Petersen subsequently wrote to the Police on a number of occasions. One of their letters requested that their query be directed to a senior officer in Grampian Police. Another requested that their letter of 22 April 2005 be referred to the Chief Constable.
4. On 13 May 2005, the Police advised Mr and Mrs Petersen that one of those letters, i.e. their letter of 9 May 2005, had been passed to the Force's Professional Standards and Conduct Department in relation to an ongoing series of correspondence between Mr and Mrs Petersen and the Police.
5. On 28 May 2005, Mr and Mrs Petersen applied to the Scottish Information Commissioner for a decision as to whether the Police had dealt with their information request in accordance with FOISA. The case was allocated to an investigating officer and the application validated by establishing that Mr and Mrs Petersen had made a valid request to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to their request.



The investigation

6. On 28 June 2005, the investigating officer contacted the Police in terms of section 49(3)(a) of FOISA for their comments on the application and for further information in relation to this case. The Police responded on 6 July 2005.
7. The Police stated that, in relation to Mr and Mrs Petersen's initial request for the policy document, no such document exists. The Police added that any incidents requiring another Police Force to investigate Grampian Police were dealt with on an *ad hoc* basis by the Deputy Chief Constable after consultation with the Area Procurator Fiscal.
8. The Police advised that there are general guidelines issued by the Lord Advocate on the investigation of complaints against the Police which do cover the appointment of an investigating Officer from another Force. However, these were not considered relevant to Mr and Mrs Petersen's request as they do not detail procedures for investigations and do not comprise a policy document. Further, there is no obligation in these or any other guidelines that actually requires a Police Force to create or produce such a policy as requested by the applicants.
9. The Police indicated that Mr and Mrs Petersen had been advised of their right to ask the Police to carry out a review of its response to their initial request.
10. However, the Police said that they did not consider that any of Mr and Mrs Petersen's were valid requests for review in terms of section 20(3) of FOISA. Instead, the Police considered the letters to be statements, in which the applicants had 'noted' the Police response.
11. The Police also stated that that the content of Mr and Mrs Petersen's letters of 26 March, 22 April and 9 May 2005 had been interpreted as being covered by an interdict and this had also been a reason for not treating these letters as a requirement for review.
12. The Police further advised that a statement made in the penultimate paragraph of Mr and Mrs Petersen's letter of 26 March 2005 may be considered by them to be vexatious.
13. Mr and Mrs Petersen stated that they were dissatisfied with the Police response and asserted that their letters of 26 March, 22 April and 9 May were requests for review.



The Commissioner's Analysis and Findings

14. This investigation focussed on Mr and Mrs Petersens' request for the policy document. The situation existing prior to their request are not matters which I can comment on except in so far as they have affected the perception of the Police as to whether Mr and Mrs Petersen's correspondence constituted a requirement for review in terms of section 20(3) of FOISA. I shall deal with this aspect in the section below entitled "Technical requirements of FOISA".
15. I understand that Mr and Mrs Petersen believe a policy should exist in order to establish procedures for calling in another Police Force to investigate claims of impropriety against Grampian Police.
16. The Police's position is that as no policy is required, none has been produced and therefore this information is not held. The Lord Advocate's guidance did not match Mr and Mrs Petersen's request in terms of description nor content and therefore this information was not supplied.

Section 14(1) – Vexatious requests

17. I have considered the claim by the Police that the comments in the penultimate paragraph of the letter from the applicants on 26 March 2005 could be considered vexatious.
18. Section 14(1) of FOISA states that section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
19. However, section 16(5) FOISA requires that any public authority claiming that section 14 applies, must, within that time (i.e. the time for compliance set out in section 10(1) of FOISA), "give the applicant notice which states that it so claims."
20. The Police have supplied no evidence to support the assertion that the comments are, or may be, vexatious and have supplied no evidence of having notified the applicants that they deemed either the request or the subsequent correspondence - whether it was considered to be a request for review, or not - to be vexatious.
21. I therefore do not place any great emphasis on the Police's claim that the comments "could be" considered vexatious in terms of FOISA. However, I acknowledge that the Police may have regarded these comments in the light of the ongoing correspondence with Mr and Mrs Petersen and that this led to a difference of opinion as to whether the letters, dated 26 March, 22 April and 9 May, were requirements for review.



Section 17(1)(b) - Information not held

22. I have considered the correspondence, submissions and information supplied to me by both parties in this case.
23. I am satisfied that no policy was ever produced in respect of a Police policy that details the criteria and procedures for concerns being investigated by a Police Force other than Grampian Police.
24. I am satisfied that the Lord Advocate's guidelines do not meet the description of Mr and Mrs Petersen's request and that the Police were correct in not considering these as relevant to their request.
25. I am therefore satisfied that the information requested by Mr and Mrs Petersen is not held by the Police in terms of section 17(1)(b) of FOISA.

Technical requirements of FOISA

26. It is clear that the Police did not respond to Mr and Mrs Petersen's request for review within the twenty working days stipulated in section 21(1) of FOISA. This is because the Police did not treat any of the letters sent by Mr and Mrs Petersen as valid requests for review.
27. Section 20(3) of FOISA sets out what is required for a request for review to be valid. I am satisfied that Mr and Mrs Petersen's letters subsequent to 11 March 2005 satisfy (a), (b) and (c) (i) of section 20(3).
28. There is some ambiguity as to Mr and Mrs Petersen's intent in their letters of 26 March and 9 May 2005. However, their letter of 22 April 2005 is marked for the attention of the person they were told to contact if they wanted to request a review. The letter makes a clear reference to the Police response of 11 March 2005, thereby specifying the request for information which gives rise to their dissatisfaction. The letter of 22 April 2005 also suggests that the response of 11 March 2005 was inconsistent with previous information given to the Petersens, thereby specifying the matter which gives rise to their dissatisfaction.
29. I am therefore satisfied that the letter of 22 April 2005 meets the requirements for a valid request for review set out in section 20(3) of FOISA.



Decision

I find that the Chief Constable of Grampian Police (the Police) acted in accordance with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by advising Mr and Mrs Petersen that the information requested was not held in terms of section 17(1)(b) of FOISA.

However, I also I find that the Police failed to comply with Part 1 of FOISA in its handling of Mr and Mrs Petersens' request for review. In particular, the Police failed to respond to a valid request for review within twenty working days as required by section 20(1) FOISA.

Appeal

Should either Mr and Mrs Petersen or the Chief Constable of Grampian 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 of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
XX October 2006



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

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

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) ... 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.

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- (3) A requirement for review must-
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);



- (b) state the name of the applicant and an address for correspondence; and
- (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

21 Review by Scottish public authority

- (1) ... a Scottish public authority receiving a requirement for review must ... comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.