

Decision Notice



Decision 042/2009 Mr Derek Cooney and the Police Complaints
Commissioner for Scotland

Information provided to the Police Complaints Commissioner for Scotland

Reference No: 200801253
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Summary

Mr Derek Cooney asked the Police Complaints Commissioner for Scotland (the PCCS) for copies of information received from Dumfries and Galloway Constabulary, Her Majesty's Inspectorate of Constabulary (HMIC) or any other body in relation to a complaint Mr Cooney had raised with the PCCS. The PCCS advised Mr Cooney that the information was no longer held. Mr Cooney was not satisfied with this response and asked for a review. The PCCS' position did not change after review. Mr Cooney remained dissatisfied and applied for a decision from the Scottish Information Commissioner (the Commissioner).

After investigation, the Commissioner found that the PCCS had dealt with Mr Cooney's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), and that the information he had asked for was not held by the PCCS.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information not held)

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

The Code of Practice on Records Management made under section 61(6) of FOISA (the Section 61 Code)

Background

1. Mr Cooney asked the PCCS to review the way in which a complaint against Dumfries and Galloway Constabulary had been dealt with. On 30 April 2008, the PCCS advised Mr Cooney that it had decided not to proceed with a case handling review in relation to his complaint.
2. On 16 June 2008, Mr Cooney wrote to ask the PCCS for copies of all letters, reports and documents supplied by Dumfries and Galloway Constabulary, HMIC or any other body in relation to his complaint.



3. On 11 July 2008, the PCCS wrote to inform Mr Cooney that it did not hold the information requested. It explained that it had previously held information received from Dumfries and Galloway Constabulary, but this information had already been destroyed, in line with its standard policy, following the conclusion of the PCCS' complaint handling review.
4. On 14 July 2008, Mr Cooney wrote to complain that the information should not have been destroyed by the PCCS before it had dealt with a complaint about the way in which it had reviewed his initial complaint. He asked for a copy of the rule relating to the destruction of documents.
5. On 13 August 2008, the PCCS supplied Mr Cooney with an excerpt from its Complaint Handling Procedures relating to the disposal of documents after completion of the complaint handling review.
6. Mr Cooney then applied to the Commissioner for a decision, but was advised that his application could not be accepted as he had not asked the PCCS to review its response to his requests.
7. Mr Cooney requested a review from the PCCS on 2 October 2008. In its reply of 4 December 2008, the PCCS confirmed it did not hold the information Mr Cooney had requested on 16 June 2008, as this information had been destroyed in line with standard PCCS policy. Mr Cooney was advised that the information he sought might be held by HMIC or Dumfries and Galloway Constabulary.
8. Mr Cooney remained dissatisfied with the response provided by the PCCS and applied for a decision from the Commissioner, in an undated letter received on 10 December 2008. He believed that the PCCS procedures showed that the information relating to his complaint should have been retained.
9. The application was validated by establishing that Mr Cooney 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.

Investigation

10. On 18 December 2008, the PCCS was notified in writing that an application had been received from Mr Cooney. Comments were invited in terms of section 49(3)(a) of FOISA, and the PCCS was asked to provide any documentation or other available evidence which would support its statement that it no longer held the information requested by Mr Cooney.



11. The PCCS replied on 22 January 2009. It confirmed that information relating to Mr Cooney's complaint had been received from both HMIC and Dumfries and Galloway Constabulary. No other agency had provided information relating to his complaint. It advised that the information had been destroyed upon conclusion of the PCCS review, but that no internal record of this action had been kept.
12. The PCCS provided an extract from its complaint handling procedures which detailed the process for returning information to a police force.
13. Dumfries and Galloway Constabulary confirmed (in a letter dated 19 February 2009) that the documentation sent to the PCCS in relation to Mr Cooney's complaint had not been returned to the police force. They understood the information to have been destroyed at the conclusion of the PCCS investigation, but had no recorded information to support this.
14. During the investigation, further information was obtained from the PCCS about its internal complaints procedure, in relation to Mr Cooney's complaint that information ought not to have been destroyed while a complaint he had lodged had yet to be investigated. Further information was also sought from Mr Cooney about the dates of his correspondence with the PCCS.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Cooney and the PCCS and is satisfied that no matter of relevance has been overlooked.
16. The PCCS stated that the information requested by Mr Cooney had been destroyed by the time he made his request (16 June 2008). The PCCS has been unable to provide any documentary evidence of the date on which the information was destroyed, but has advised that the destruction of the documents was in line with its complaints handling procedures.
17. The PCCS has pointed to section 2.7 of its complaints handling procedures, which includes the following:

“Subject to the approval of the Director, once the report is finalised any original police documentation held in the office should be returned to the relevant police body...Any lilac copy documents should also be shredded, and electronic copies of police files deleted. The responsible case officer should also consult the Business Performance Manager to ensure that there is not an outstanding request for information or complaint about the PCCS relating to the complaint. All police documents should be removed from our records within 7 calendar days of publication.

The case officer must check that a full list of the documents provided to the PCCS has been retained on the main PCCS case file.”



18. The “lilac copy documents” referred to above are copies of police documents made during the PCCS’ consideration of a complaint, where required (as explained in section 2.4.2 of the complaints handling procedures).
19. There are some differences between the process laid down in the complaints handling procedures and what appears to have taken place in relation to the documents in Mr Cooney’s case. The documents supplied by Dumfries and Galloway Constabulary were paper copies, but were destroyed by the PCCS rather than returned to the police force; and no copy of the full list of documents provided to the PCCS was retained in the case file.
20. However, the Commissioner accepts that the complaints handling procedures provide evidence that it is normal practice for the PCCS not to retain documents for more than 7 days after the conclusion of a case. The Commissioner also notes that, during the investigation, the PCCS provided confirmation that documents may be “destroyed or returned” and that, either way, this takes place after 7 days (email of 3 March 2009).
21. The Commissioner notes that, according to the PCCS’ complaints handling procedures, the case officer should check whether there is any outstanding complaint or request for information when disposing of the case documents. Although Mr Cooney did submit a complaint about the way in which the PCCS had dealt with his case, his complaint was made on 16 June 2008 and not within 7 days of the conclusion of his case. There was therefore no reason, according to the complaints handling procedures, why the documents relating to his case should have been retained (although a list of those documents should have been kept, which in this case did not happen).
22. The PCCS advised the Commissioner that if a complaint about the way in which a complaint had been reviewed was received after the case documents were destroyed or returned, the PCCS would obtain copies again from the police force concerned.
23. In relation to the lack of recorded information about the disposal of the case documents, the Commissioner would ask the PCCS to consider its records management practices in light of the Code of Practice on Records Management (the Section 61 Code of Practice), and particularly section 8 of that document, which states:
 - 8.1 Each business area of the authority should have in place adequate arrangements for documenting its activities. These arrangements should take into account the legislative and regulatory environments in which the authority operates.
 - 8.2 Records of a business activity should be complete and accurate enough to allow current employees and their successors to fulfil their responsibilities to:
 - facilitate an audit or examination of the business by anyone so authorised;

(...)



24. However, on the balance of the evidence available to him, the Commissioner finds that the PCCS complied with Part 1 of FOISA in advising Mr Cooney that, in terms of section 17(1) of FOISA, the information he requested was not held. Given that there is no documentary evidence to rely upon, the Commissioner has reached his decision on the basis of the PCCS' standard procedures for the disposal of information, as recorded in the PCCS' complaints handling procedures. Although Mr Cooney has raised concerns about the speed with which the information relating to his case was destroyed, the complaints handling procedures show this to be standard practice within the PCCS once a case has been concluded.

DECISION

The Commissioner finds that the Police Complaints Commissioner for Scotland acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cooney.

Appeal

Should either Mr Cooney or the Police Complaints Commissioner for Scotland 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.

Margaret Keyse
Head of Investigations
7 April 2009



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.

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); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; 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.