

Decision Notice



Decision 120/2010 Peter Petersen and Grampian Joint Police Board

Request for a range of information about procedures and complaints

Reference No: 201000483

Decision Date: 14 July 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

Peter Petersen requested from Grampian Joint Police Board (the Board) a range of information concerning Board policies and protocols, information relating to a specified complaint and the numbers of complaints made against Grampian Police within a specified time period. The Board responded to two parts of the request by indicating that it did not hold the specified information. With respect to the remaining parts, the Board did not respond, and following a request for review to which no response was received, Mr Petersen remained dissatisfied. He applied to the Commissioner for a decision with respect to both the decision that the specified information was not held, and the failure to respond to the other parts of the request.

Following an investigation, the Commissioner found that the Board had partially failed to deal with Mr Petersen's request for information in accordance with Part 1 of FOISA, by failing to provide any response to three parts of Mr Petersen's request. However, he found that the Board complied with Part 1 of FOISA by indicating that no information was held in relation to the parts of the request to which it had responded.

As the Board subsequently provided responses under FOISA to Mr Petersen in relation to the remaining parts of his request, the Commissioner did not require the Board to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is 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.

Background

1. On 24 September 2009, Mr Petersen wrote to the Board requesting a range of information in five parts:
 - (a) information held about the Board's policy and/or protocol in relation to exempt information in terms of section 50A(4) of the Local Government (Scotland) Act 1973 (LGSA).



- (b) the procedure and/or protocol of the Board in relation to the misuse and or abuse of section 50A(4) of the LGSA.
 - (c) any information placed on record about a particular complaint
 - (d) copies of all correspondence, emails, notes, memos and reports held, that were issued on or after a particular date, and in connection with specified matters.
 - (e) the number and list of complaints against the Grampian Police in the twenty-four months prior to the date of his letter.
2. Mr Petersen did not receive a response to his request and on 26 October 2009 he wrote to the Board asking for a review of its failure to respond to his request.
 3. Mr Petersen did not receive a response to his request for review, and he applied to the Commissioner for a decision. The Commissioner subsequently issued a decision (*Decision 025/2010 Mr Peter Petersen and Grampian Joint Police Board*) on the Board's failure to respond. That decision noted that, by the time that it had been issued, a response had been provided by the Board to Mr Petersen's request, and that no action by it was required.
 4. That response was made on 19 January 2010 (although it was incorrectly dated 19 January 2009) and it advised Mr Petersen that, after conducting the requisite search, the Board did not hold any policy and/or protocol in relation to exempt information or the use or misuse of section 50A(4) of the LGSA. This response therefore appeared to respond in terms of section 17(1) of FOISA, but only addressed parts (a) and (b) of Mr Petersen's request set out in paragraph 1 above. This response omitted to address parts (c) to (e) inclusive of Mr Petersen's request.
 5. On 28 February 2010, Mr Petersen wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Board's review of 19 January 2010 and applying for a decision in terms of section 47(1) of FOISA. Mr Petersen expressed dissatisfaction with the Board's failure to respond to parts (c)-(e) of his request, and with the Board's assertion that it did not hold the information sought by part (a) and (b).
 6. The application was validated by establishing that Mr Petersen 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

7. On 10 March 2010, the Board was notified in writing that an application had been received from Mr Petersen. The case was then allocated to an investigating officer.



8. The investigating officer subsequently contacted the Board on 7 April 2010, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Board was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested. The Board replied with its submissions (providing an explanation for the delay in doing so) on 10 June 2010.
9. The Board advised the Commissioner that its failure to respond to Mr Petersen had occurred in the context of its previous correspondence with Mr Petersen, during which it had advised him that it would not engage with him further unless new information was presented to it. However, the Board also acknowledged that, with the benefit of hindsight, it would have been better to have provided a response to Mr Petersen in terms of FOISA.
10. The Board clarified with respect to its response to Mr Petersen of January 2010 that it was claimed only that it did not hold the information requested in relation to parts (a) and (b) of Mr Petersen's request. It provided details of the searches undertaken to determine whether this information was indeed held by the Board.
11. The Board indicated that it considered the information sought by parts (c) and (d) of Mr Petersen's request to be exempt from disclosure. With respect to part (e), the Board indicated that information would be supplied to Mr Petersen relating to the number of complaints received.
12. During the investigation, the Board wrote again to Mr Petersen in five letters, confirming its response to each of parts (a) to (e) of his request of 24 September 2009.
13. Mr Petersen was in contact with the investigating officer during the investigation, and he provided comments on the case.
14. The submissions received from both Mr Petersen and the Board are summarised below where relevant.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Petersen and the Board and is satisfied that no matter of relevance has been overlooked.

Scope of decision

16. The Commissioner has noted that the investigation in this case, and this decision, cover two issues. The first is whether the Board was correct to notify Mr Petersen in January 2010 that the information requested in parts (a) and (b) of his request was not held. The second is the Board's failure to provide any substantive response to parts (c) to (e) of Mr Petersen's request.



Parts (a) and (b): Section 17 - Information not held

17. The Commissioner has noted that the Board's letter of 19 January 2010 only provided a substantive in relation to parts (a) and (b) of Mr Petersen's request. This response indicated in terms of section 17 of FOSIA that this information was not held by the Board.
18. Section 17(1) of FOISA requires that, where an authority receives a request for information it does not hold, it must give an applicant notice in writing that it does not hold the information.
19. In order to determine whether the Board dealt with parts (a) and (b) of Mr Petersen's request correctly, the Commissioner must be satisfied as to whether, at the time it received his request, the Board held any information which would fall within the scope of those parts.
20. The Board provided detailed submissions in response to the questions put by the investigating officer on this matter. It also advised on the searches which it had undertaken, both electronic and paper-based, and provided the range of different search terms which had been used. The Board explained that staff were also consulted, but none had any knowledge of a current or previous procedure relating to declaring items exempt under the LGSA.
21. The Board further commented that it would not be expected, nor legally required, that the Board would hold information on this subject. It stated that the statutory provision to which Mr Petersen has referred in this part of his request was one which would be complied with, as appropriate, without the need for any procedure.
22. Having considered all the submissions he has received, the Commissioner is satisfied that adequate steps have been taken by the Board to determine whether it held the information in question. The Commissioner accepts that there is no statutory requirement, or guidance, to suggest that the Board should or would hold a procedure, policy or protocol relating to the use, misuse or abuse of section 50A(4) of the LGSA. In the absence of a policy, procedure or protocol, the Commissioner would not expect to find any information about such a policy, procedure or protocol.
23. The Commissioner is satisfied that the information sought in parts (a) and (b) of Mr Petersen's information request was not held by the Board at the time of Mr Petersen's information request was received. He is therefore satisfied that the Board was correct to have given Mr Petersen notice in terms of section 17(1) of FOISA.
24. He has therefore concluded that the Board complied with Part 1 of FOISA in respect of parts (a) and (b) of Mr Petersen's request.

Parts (c) – (e) of Mr Petersen's request: technical breaches

25. Decision 025/2010 made clear that the Board had failed to comply with the requirements of sections 10(1) and 21(1) of FOISA when responding to Mr Petersen's information request and the subsequent request for review within the requisite timescales. Since a decision has already been made in this respect, the Commissioner has not considered this matter again.



26. However, while Decision 025/2010 indicated that the Board had rectified these failures by providing a response to Mr Petersen's request, it has since become clear that the response issued on 19 January 2010 was partial. Therefore, the Commissioner notes that, at the time of Mr Petersen's application in this case, the Board had still failed to provide any response with respect to parts (c), (d) and (e) of Mr Petersen's request.
27. With respect to these parts, the Commissioner can only conclude that the failure to address these parts of the request (which met all of the requirements of section 8(1) of FOISA) by either supplying information or giving notice as to why it was not being provided, the Board breached the requirements of section 1(1) of FOISA.
28. However, responses were supplied in relation to each of parts (c), (d) and (e) during the investigation, and consequently, the Commissioner does not require the Board to take any action in relation to this breach in response to this decision.

DECISION

The Commissioner finds that Grampian Joint Police Board (the Board) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Petersen.

The Commissioner finds that the Board correctly notified Mr Petersen in terms of section 17 of FOISA that it did not hold the information sought by parts (a) and (b) of his request. In this respect, the Board complied with Part 1 of FOISA.

However, the Commissioner finds that the Board failed to comply with Part 1 and particularly section 1(1) of FOISA by failing to provide any response to parts (c), (d) and (e) of Mr Petersen's information request.

As the Board has now issued responses in respect of parts (c), (d) and (e) of Mr Petersen's request, the Commissioner does not require any action to be taken by the Board in response to these failures.



Appeal

Should either Mr Petersen or Grampian Joint Police Board 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 Enforcement
14 July 2010



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.

...