

Decision Notice

Decision 107/2014 Mr J and the Chief Constable of the Police Service of Scotland

Documentary Series “Crime Scenes Scotland”: failure to respond within statutory timescales

Reference No: 201400476

Decision Date: 15 May 2014



Scottish Information
Commissioner

Summary

On 4 November 2013, Mr J asked the Chief Constable of the Police Service of Scotland (Police Scotland) for information about the production of the BBC documentary series “Crime Scenes Scotland”. This decision finds that Police Scotland failed to respond to the request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

Date	Action
4 November 2013	Mr J made an information request to Police Scotland.
9 December 2013	Police Scotland responded to the information request.
21 December 2013	Mr J wrote to Police Scotland requiring a review of their decision.
	Mr J did not receive a response to his requirement for review.
27 February 2014	Mr J wrote to the Commissioner’s Office, stating that he was were dissatisfied with those failures and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10 March 2014	Police Scotland were notified in writing that an application had been received from Mr J and were invited to comment on the application.
24 March 2014	The Commissioner received submissions from Police Scotland. 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 Police Scotland did not provide a response to Mr J’s request for information within 20 working days, so the Commissioner finds that they 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. Police Scotland explained that their original response to Mr J’s requirement for review was issued on 24 December 2013. Unfortunately, insufficient postage was paid on the letter. Mr J did not pay the outstanding balance and therefore never received the letter.

5. During the investigation, Police Scotland posted a further copy of the letter and Mr J confirmed receipt of this.
6. In terms of section 74(1)(a) of FOISA, a notice under section 21(5) of FOISA (i.e. notice of the outcome of the review) can be either delivered or posted. In this case, Police Scotland attempted to post the notice. However, the Commissioner cannot accept that attempt as effective posting: in the absence of full payment, the letter could not reach Mr J without intervention from him.
7. In the circumstances, the Commissioner must find that Police Scotland did not provide a response to Mr J's requirement for review within 20 working days. Therefore, she finds that they failed to comply with section 21(1) of FOISA.
8. Given that Police Scotland responded to Mr J's requirement for review during the investigation, the Commissioner does not require them to take any further action in relation to Mr J' application.

Decision

The Commissioner finds that the Police Service of Scotland failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr J. In particular, Police failed to respond to Mr J's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

Given that the response has now been sent to Mr J, the Commissioner does not require Police Scotland to take any action in respect of these failures, in response to Mr J's application.

Appeal

Should either Mr J or the Chief Constable of the Police Service of Scotland wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. The appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Deputy Head of Enforcement
15 May 2014

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