

# Decision Notice

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## **Decision 206/2016: The applicant and the Chief Constable of the Police Service of Scotland**

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### **Failure to respond to an information request and review requirement**

Reference No: 201600930

Decision Date: 30 September 2016



Scottish Information  
Commissioner

## Summary

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On 9 February 2016, the applicant emailed an information request to the Chief Constable of Police Scotland (Police Scotland), followed by a review request when a response was not forthcoming. There was no response to the review request. This was because Police Scotland had blocked the email address as part of the approach they were taking to manage the large volume of email correspondence they were receiving from the applicant, so were unaware of the request and request for a review.

The Commissioner's investigation concluded that the blocked emails had been received by Police Scotland for the purposes of making an information request. She therefore found that they had failed to respond to the applicant's request and review request, and so were in breach of sections 10(1) and 21(1) of FOISA.

Police Scotland subsequently responded to the applicant's review request and arranged to put in place a more sophisticated filter on their server that would allow information requests to be submitted by the applicant via email if sent in a specified way to a specified address. As a result, the Commissioner did not require Police Scotland to take any action in relation to these breaches in response to this decision.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1) (Time for compliance) and 21(1) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 9 February 2016, the applicant made a request for information to Police Scotland. The information requested was: *"Any information that would show in what way a service user may report a hate incident and have it logged..."*
2. On 10 March 2016 the applicant wrote to Police Scotland requesting a review of their decision as they did not to respond to the request.
3. On 17 May 2016 the applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA, because Police Scotland had not responded to the request or review requirement.

## Investigation

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4. The application was accepted as valid. The Commissioner confirmed that the applicant made a request for information to a Scottish public authority and asked the authority to review their decision not to respond to that request before applying to her for a decision.
5. On 28 June 2016, Police Scotland were notified in writing that the applicant had made a valid application and the case was allocated to an investigating officer

6. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and to explain why they had not provided a response to the applicant.
7. Police Scotland informed the investigating officer that they had provided a response to the applicant's review requirement on 11 July 2016. They also provided submissions explaining why they had not initially responded.
8. The applicant was asked to comment on the submission from Police Scotland and to confirm whether the Commissioner was still required to issue a decision in this case. The applicant confirmed that a decision was still required.

## **Commissioner's analysis and findings**

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9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both the applicant and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

### **Submissions from Police Scotland**

10. Police Scotland submitted that they had been unaware of the request and review requirement made by the applicant because they had blocked the sender's email address. They had done this to try to manage the volume of emails that they were receiving from this email address on a daily basis because it was having a detrimental effect on the effective operation of the service.
11. Police Scotland provided the Commissioner with copies of letters they had sent to the applicant on 4 March 2015 and 30 July 2015.
12. In the letter of 4 March 2015, Police Scotland advised that, between January and March 2015, they had received in excess of 300 emails from the applicant, copied to three separate police email addresses, with only a small proportion of these emails being requests for information. Police Scotland explained that dealing with these emails was diverting valuable sources from their core functions and asked the applicant to use only one specific email address when making information requests.
13. In the letter of 30 July 2015, Police Scotland advised that they had subsequently received over 1,759 emails between March and June 2015. Only a very small number of these emails related to police business. As the applicant had not complied with their request to send emails to one particular email address, Police Scotland informed the applicant that they would block emails from the applicant's email address. Police Scotland advised the applicant that information requests could still be sent by post.
14. Police Scotland was asked to comment on whether they considered they had actually received the emails containing information requests, given they were automatically blocked. Police Scotland accepted that the emails had *technically* been received but were never made available to a human/machine interface in order that an employee could read them and act upon the request and review requirement contained within.
15. The Commissioner agrees with this. In order to trigger the blocking mechanism set up by Police Scotland, the applicant's emails would have to have reached Police Scotland's server. Given that the emails were received by Police Scotland's server, the Commissioner must find that they were, in fact, received by Police Scotland, regardless of whether or not an

employee actually read them. As such, she finds that Police Scotland were obliged to provide a response to both emails but did not do so.

### **Technical breaches of FOISA**

16. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information.
17. The Commissioner finds that Police Scotland failed to respond to the applicant's initial request of 9 February 2016 within the 20 working day period allowed, and so failed to comply with section 10(1) of FOISA.
18. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
19. The Commissioner finds that Police Scotland failed to respond to the applicant's requirement for review of 10 March 2016 within the 20 working days allowed under section 21(1) of FOISA.
20. In failing to comply with these timescales, Police Scotland failed to comply with Part 1 of FOISA. As Police Scotland subsequently provided a response to the applicant's review requirement on 11 July 2016 (once they had been made aware of the request and review requirement by the Commissioner's office), the Commissioner does not require Police Scotland to take any action in relation to these breaches.

### **Further actions proposed by Police Scotland**

21. Police Scotland informed the Commissioner that their IT department had confirmed that it had the capability to put in place a filter which would not block emails with the phrase "information request" in the subject line of emails. In an effort to engage with the applicant, Police Scotland said they would alter the settings of their filter to allow emails through which satisfied all of the following conditions:
  - (i) The emails are sent from the applicant's two specified email addresses
  - (ii) The emails are addressed to FOIEdinburgh@scotland.pnn.police.uk
  - (iii) The emails have the phrase "information request" within the subject line
22. Police Scotland explained that if all three of the above points were adhered to then any request from the applicant should reach the Edinburgh Information Management FOI mailbox for logging, allocation and response. Police Scotland stated that the changes to the filter would take effect from 1 October 2016 and that they would inform the applicant to this effect.
23. Police Scotland submitted that they were attempting to provide a reasonable means for the applicant to exercise FOI rights without compromising their work efficiency. They also explained that use of this route for making an information request will be subject to regular review by Police Scotland.
24. The Commissioner has considered Police Scotland's proposal. Given the particular circumstances of this case, she concludes that it offers a reasonable and proportionate way of providing the applicant with the ability to submit information requests by email, while also enabling Police Scotland to manage wider communications. The new filter settings would allow the applicant to make information requests which would be logged and responded to.

Police Scotland would be protected from the disruption caused by receiving huge numbers of emails, and the time taken to read the emails which do not require a response under FOISA.

25. While the Commissioner is of the view the solution proposed by Police Scotland is reasonable and proportionate, she is also aware that to be effective the applicant must use it in the way explained. The Commissioner urges the applicant to accept and adhere to the approach.

## Decision

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The Commissioner finds that the Chief Constable of Police Scotland (Police Scotland) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the applicant. In particular they failed to respond to the applicant's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA.

As a response has now been provided to the applicant's review requirement and alternative arrangements for submitting information requests are being put in place, the Commissioner does not require Police Scotland to take any action in relation to these breaches in response to this decision.

## Appeal

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Should either the applicant or Police Scotland 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**30 September 2016**

### 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.

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#### **10 Time for compliance**

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

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#### **21 Review by Scottish public authority**

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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