

Decision Notice

Decision 121/2018: Mr D and the Scottish Police Authority

Police appeals tribunals: failure to respond within statutory timescales

Reference No: 201801119

Decision Date: 09 August 2018



Scottish Information
Commissioner

Summary

Mr D asked for information about Police appeals tribunals under the new 2013 rules. This decision finds that the Scottish Police Authority (the SPA) failed to respond to the request and request for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the SPA failed to provide Mr D with the appropriate information about his rights of appeal.

Background

Date	Action
28 March 2018	Mr D made an information request to the SPA.
	The SPA did not respond to the information request.
30 May 2018	Mr D wrote to the SPA requiring a review of its decision in respect of its failure to respond.
	Mr D did not receive a response to his requirement for review.
2 July 2018	Mr D wrote to the Commissioner's Office, stating that he was dissatisfied with the SPA's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
25 July 2018	The SPA was notified in writing that an application had been received from Mr D and was invited to comment on the application.
26 July 2018	The SPA issued a response to Mr D.
	The SPA did not provide the Commissioner with any submissions.

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 the SPA did not provide a response to Mr D's request for information within 20 working days, so the Commissioner finds that it 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. It is a matter of fact that the SPA did not provide a response to Mr D's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

5. In its response to Mr D, the SPA advised that him that if he is dissatisfied with the way his request has been dealt with he is entitled to seek a review of the SPA's actions and decisions.
6. The Commissioner notes that Mr D made a request for review on 30 May 2018. It follows that the SPA was required to carry out a review and respond in terms of section 21(4)(c) of FOISA (i.e. to reach a decision, where no decision had been reached). However, the response provided to Mr D on 26 July 2018 invited Mr D to seek a review if dissatisfied.
7. Given that Mr D had already requested a review, the SPA's response of 26 July 2018 must be taken as its review response. Mr D should have been advised of his right to apply to the Commissioner, rather than invited to submit a second requirement for review.
8. Consequently, the Commissioner finds that the SPA failed to respond to Mr D's request for review in accordance with section 21(4) of FOISA and failed to provide Mr D with particulars about his right of application to the Commissioner and of his appeal rights in terms of section 47(1) and 56 of FOISA, as required by section 21(10).

Decision

The Commissioner finds that the Scottish Police Authority (the SPA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr D.

The SPA failed to respond to Mr D's request within 20 working days. In doing so, it failed to comply with section 10(1) of FOISA.

The SPA also failed to respond to Mr D's requirement for review in terms of section 21(1) and 21(4)(c). It failed to provide particulars about his right of application to the Commissioner and his appeal rights in terms of sections 47(1) and 56 of FOISA, as required by section 21(10).

As the Commissioner considers the SPA's response to Mr D on 26 July 2018 to constitute a review, he does not require it to take any further action in response to its failures.

Appeal

Should either Mr D or the SPA 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.

Alison Davies
Deputy Head of Enforcement

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