

Decision Notice

Decision 077/2015: Mr Andrew Picken and the Chief Constable of the Police Service of Scotland

Crime and incident audits: failure to respond within statutory timescales

Reference No: 201500807

Decision Date: 12 June 2015



Scottish Information
Commissioner

Summary

On 19 January 2015, Mr Picken asked the Chief Constable of the Police Service of Scotland (Police Scotland) for information about crime and incident audits involving crimes subsequently marked 'no crime'. This decision finds that Police Scotland failed to comply with Mr Picken's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered Police Scotland to comply with the requirement for review.

Background

| Date | Action |
|------------------|--|
| 19 January 2015 | Mr Picken made an information request to Police Scotland. |
| 10 February 2015 | Police Scotland responded to the information request. |
| 18 February 2015 | Mr Picken wrote to Police Scotland, requiring a review of their decision. |
| | Mr Picken did not receive a response to his requirement for review. |
| 29 April 2015 | Mr Picken wrote to the Commissioner's Office, stating that he was dissatisfied with Police Scotland's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 22 May 2015 | Police Scotland were notified in writing that an application had been received from Mr Picken and were invited to comment on the application. |
| 9 June 2015 | The Commissioner received submissions from Police Scotland. These submissions are considered below. |

Commissioner's analysis and findings

1. 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. 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 Picken's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.
3. Police Scotland acknowledged that they had failed to respond to Mr Picken's requirement for review within the statutory timescale, and confirmed a response would be sent to Mr Picken. This had not been done by the time of this decision.
4. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the

Commissioner finds that Police Scotland failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police 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 Picken. In particular, Police Scotland failed to respond to Mr Picken's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner requires Police Scotland to provide a response to Mr Picken's requirement for review, in accordance with section 21 of FOISA, by **27 July 2015**.

Appeal

Should either Mr Picken or the Chief Constable of the Police Service of Scotland (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.

Enforcement

If Police Scotland fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Police Scotland have failed to comply. The Court has the right to inquire into the matter and may deal with Police Scotland as if they had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

12 June 2015

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