

Decision Notice

Decision 043/2019: Mr A and the Chief Constable of the Police Service of Scotland

Decision to hold an arrested person in custody: failure to respond within statutory timescales

Reference No: 201900362

Decision Date: 14 March 2019



Scottish Information
Commissioner

Summary

The Chief Constable of the Police Service of Scotland (Police Scotland) was asked for information on which the decision to hold an arrested person in custody would be based. Police Scotland responded by reference to its Standard Operating Procedures. The applicant was not satisfied that all relevant information had been provided and asked for a review.

This decision finds that Police Scotland failed to respond to the applicant's requirement for review within the timescale set down by FOISA.

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

Background

Date	Action
2 November 2018	Mr A made an information request to Police Scotland.
12 December 2018	Police Scotland responded to the information request.
20 December 2018	Mr A wrote to Police Scotland, requiring a review of their response.
	Mr A did not receive a response to his requirement for review.
25 February 2019	Mr A 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.
6 March 2019	Police Scotland were notified in writing that an application had been received from Mr A and were invited to comment on the application.
11 March 2019	The Commissioner received submissions from Police Scotland. These submissions are considered below.

Commissioner's analysis and findings

1. Police Scotland confirmed that they had received Mr A's requirement for review and acknowledged they had failed to respond.
2. They confirmed a review was in the process of being carried out, with the intention of issuing the outcome to Mr A as soon as possible. This had not been done at the time of this decision.
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. This is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that Police Scotland did not provide a response to Mr A's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

5. 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: he now requires a review to be carried out in accordance with section 21.
6. The Commissioner recommends that Police Scotland consider whether it would be appropriate to apologise to Mr A for their failure to comply.

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 A.

In particular, Police Scotland failed to respond to Mr A'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 A's requirement for review, by **Monday 29 April 2019**.

Appeal

Should either Mr A 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.

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 it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

14 March 2019

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