

# Decision Notice

---

**Decision 055/2018: Mr Derek Cooney and the Chief Constable of the Police Service of Scotland**

---

**Complaint handling: failure to respond within statutory timescales**

Reference No: 201800452

Decision Date: 19 April 2018



Scottish Information  
Commissioner

## Summary

Mr Cooney asked Police Scotland for information about their refusal to investigate his complaints. This decision finds that Police Scotland failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that Police Scotland failed to comply with Mr Cooney'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
9 December 2017	Mr Cooney made an information request to Police Scotland.
	Police Scotland did not respond to the information request.
4 February 2018	Mr Cooney wrote to Police Scotland requiring a review of their decision in respect of their failure to respond.
	Mr Cooney did not receive a response to his requirement for review.
10 March 2018	Mr Cooney 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.
27 March 2018	Police Scotland were notified in writing that an application had been received from Mr Cooney and were invited to comment on the application.
10 April 2018	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 Cooney'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. It is a matter of fact that Police Scotland did not provide a response to Mr Cooney's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

5. Police Scotland explained that Mr Cooney's request for information and his requirement for review were sent by recorded delivery to the Scottish Police College at Tulliallen. From there, it appears that the letters were forwarded to Police Scotland's Professional Standards Department in Glasgow.
6. Police Scotland explained that the Professional Standards Department did not respond to his correspondence (for reasons explained to the Commissioner), nor did they forward his letters to the FOI department. As a result, the FOI department was unaware of the existence of Mr Cooney's request and request for review.
7. Police Scotland stated that the letters will now be logged by the FOI department and an appropriate response provided to Mr Cooney. They also advised that Mr Cooney will be updated that the requests are being progressed.
8. The Commissioner notes the comments made by Police Scotland but he would stress that it is Police Scotland's responsibility to ensure that all information requests are logged and responded to timeously, regardless of the department to which the requests are directed or received.
9. As no review has been carried out in this case, the Commissioner requires a review to be carried out in accordance with section 21.

## Decision

---

The Commissioner finds that 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 Cooney. In particular, Police Scotland failed to respond to Mr Cooney's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires Police Scotland to provide Mr Cooney with a response to his requirement for review, by **4 June 2018**.

## Appeal

---

Should either Mr Cooney 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 has 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.

**Alison Davies**  
**Deputy Head of Enforcement**  
**19 April 2018**

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**