

# Decision Notice



Decision 145/2009 Mr E and the Chief Constable of Tayside Police

Investigation report

Reference No: 200901116

Decision Date: 17 December 2009

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr E requested from the Chief Constable of Tayside Police (Tayside Police) information relating to a police investigation. Tayside Police responded by informing Mr E that this was a repeated request and therefore subject to section 14(2) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr E remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Tayside Police had dealt with Mr E's request for information in accordance with Part 1 of FOISA and had been entitled to decline to deal with the request on the basis that it was repeated.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) and 14(2) (Vexatious or repeated requests)

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

Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code)

## Background

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1. On 13 March 2009, Mr E wrote to Tayside Police requesting information relating to a specified police investigation.
2. Tayside Police responded on 17 March 2009, intimating that the request for information was being refused under section 14(2) of FOISA on the grounds that it was a repeated request in that it was substantially similar to a previous request dated 2 May 2008, which Tayside Police had responded to on 5 June 2008.
3. On 6 April 2009, Mr E wrote to Tayside Police requesting a review of their decision. Mr E considered that his request for information was not a repeated request and he required an answer.



4. Tayside Police responded to Mr E's request for review on 21 April 2009, upholding their original decision without amendment.
5. On 15 June 2009, Mr E wrote to the Commissioner, stating that he was dissatisfied with the outcome of Tayside Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr E had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review their response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. On 6 July 2009, Tayside Police were notified in writing that an application had been received from Mr E and were asked to provide comments on the application (as required by section 49(3)(a) of FOISA). Tayside Police were also asked to respond to specific questions and, in particular, were asked to justify their reliance on section 14(2) of FOISA.
8. Tayside Police responded on 23 July 2009, providing their submissions as to why they considered Mr E's request of 13 March 2009 was a repeated request.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr E and Tayside Police and is satisfied that no matter of relevance has been overlooked.

### Consideration of Section 14(2)

10. Section 14(2) of FOISA states:

"Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request."

11. When considering section 14(2) of FOISA, the following points need to be considered:

- whether Tayside Police complied with Mr E's first request dated 2 May 2008;
- whether the subsequent request (dated 13 March 2009) was identical or substantially similar to the first request (dated 2 May 2008); and



- if so, whether there was a reasonable time between the submission of the first request and the submission of the subsequent request.

### **Was the first request complied with?**

12. Mr E included with his application to the Commissioner a copy of his first request (dated 2 May 2008) and Tayside Police's response. In his first request Mr E sought information held by Tayside Police relating to a criminal investigation carried out by them.
13. Tayside Police had responded to Mr E's information request on 5 June 2008, stating that they refused to confirm or deny whether the information was held under section 18 of FOISA (in conjunction with sections 34(1)(a) and (b), 35(1)(a) and (b) and 35(2)(a) of FOISA). Tayside Police advised Mr E that if he was dissatisfied with the response, he could request a review by writing to the Force Records Manager. No review request was received.
14. The Commissioner is therefore satisfied that Tayside Police complied with Mr E's original request in line with the requirements laid down in FOISA.
15. Since the Commissioner is satisfied that Mr E's first request was complied with, he will now go onto consider whether the subsequent request was identical or substantially similar to the first.

### **Was the second request identical or substantially similar to the first?**

16. In their submissions, Tayside Police stated that Mr E's requests of 2 May 2008 and 13 March 2009, while not in exactly the same terms, were similar enough to bring them within the scope of section 14(2) of FOISA.
17. Tayside Police commented that in both requests Mr E asked three identical questions in relation to specific matters concerning allegations of criminal behaviour. Tayside Police considered that the terminology of Mr E's second request was perhaps slightly clearer, but in effect both requests ask for identical information.
18. Tayside Police went on to comment that in Mr E's second request he had included an additional sub-question in relation to three specified matters. Tayside Police considered that this sub-question was linked to the main question, asking in effect whether certain activities had taken place and if so what recorded information existed to respond to the more detailed sub-question. In their response to Mr E dated 17 March 2009, Tayside Police advised him that this additional sub-question would not have resulted in a different response to that of his first request in that Tayside Police could neither confirm nor deny that the information was held.
19. Having carefully considered Mr E's requests, the Commissioner notes that in both cases Mr E sought a full written report relating to a specified criminal investigation conducted by Tayside Police. Although the second request was phrased slightly differently from the first and included an additional question, the Commissioner accepts that the request of 13 March 2009 effectively sought all of the information falling within the scope of the first request of 2 May 2008.



20. The Commissioner considers that it was reasonable for Tayside Police to conclude that the request of 13 March 2009 was substantially similar to the request of 2 May 2008.
21. The Commissioner will now consider whether a reasonable period of time passed between the making of the request complied with and the making of the subsequent request.

#### **Had a reasonable period of time passed?**

22. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (commonly known as "the Section 60") provides some guidance on repeated requests (paragraph 25):  
  
"...[FOISA] also provides that an authority, which has already complied with a request for information from a person, can refuse to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request. If the information has changed between applications, this unlikely to be viewed as a repeated request... What constitutes a "reasonable period of time" will depend on the circumstances of the case..."
23. In their submissions, Tayside Police confirmed that there had been no relevant change in circumstances since Mr E's original request in 2008. Tayside Police also submitted that the subject matter of the request is such that the time period between requests is irrelevant and that if a similar request was received again from Mr E or from another individual, their response would be the same as that of 5 June 2008 in that they would refuse to confirm or deny whether the information was held. While there is no definition of "a reasonable period of time" for these purposes, the Commissioner is satisfied that a period of ten months can be regarded as reasonable in this case. In the circumstances, therefore, the Commissioner considers that Tayside Police correctly applied the terms of section 14(2) of FOISA to Mr E's request.

#### **Court of Session decision**

24. The Commissioner notes that the information request by Mr E included a request for a copy of a report. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA gives a right to information, not documents. However, the Court also said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.



25. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr E and Tayside Police that Tayside Police questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which Tayside Police has subsequently had with the Commissioner that Tayside Police was unclear as to what the information requested sought.
26. The Commissioner is satisfied that the request is reasonably clear and that the request is therefore valid.

## DECISION

The Commissioner finds that the Chief Constable of Tayside Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in advising Mr E that his request dated 13 March 2009 was a repeated request in line with section 14(2) of FOISA.

## Appeal

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Should either Tayside Police or Mr E wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**17 December 2009**



## Appendix

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### Relevant statutory provisions

#### 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 14 Vexatious or repeated requests

(...)

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.