

Decision Notice



Decision 180/2011 Mr Eddie Cairns and the Police Complaints Commissioner
for Scotland

Complaints handling practices

Reference No: 201100680
Decision Date: 5 September 2011

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Scottish Information Commissioner

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Summary

Mr Cairns requested from the Police Complaints Commissioner for Scotland (the PCCS) specific information on complaints handling practices. The PCCS responded by explaining why it did not hold any information falling within the scope of Mr Cairns' request. Following a review, Mr Cairns remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the PCCS had dealt with Mr Cairns' request for information in accordance with Part 1 of FOISA, accepting that it did not hold any information falling within the scope of the request. He did not require the PCCS to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Notice that information is not held)

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.

Background

1. On 21 February 2011, Mr Cairns wrote to the PCCS requesting the following information:
 - a) Does the PCCS always investigate and report the total number of letters of complaint sent by a person who has requested a review by the PCCS of how the police handled only one or two letters of complaint?
If not, is this ever done in any particular cases and if so, why?
 - b) Does the PCCS obtain this information from the police force in question and accept that figure as accurate without carrying out any independent check or is an independent check carried out by the PCCS?
 - c) Does the PCCS obtain copies of the alleged letters of complaint and examine these to check that they were indeed letters of complaint against the police and not some other category of letter?



- d) Does the PCCS obtain from the force in question a list of formal complaint references allocated to the alleged letters of complaint sent by the person who has requested a review?
 - e) Does the PCCS carry out a check to reconcile these two quantities to ensure that there is no discrepancy between the alleged number of letters of complaint and the number of formal complaint references issued?
 - f) If no formal complaint reference was ever allocated by the police to any particular letter from the person does the PCCS regard that complaint as not having been handled as a letter of complaint?
If not, why not?
 - g) In recent years have there been any large discrepancies between the number of letters of complain alleged by the PCCS to have been sent by a person who has requested a review and the number of letters of complaint that the person himself or herself alleges to have been sent?
If so, what were the reasons for those large discrepancies?
2. The PCCS received Mr Cairns' request on 23 February 2011 and responded on 21 March 2011, providing explanations in response to the majority of Mr Cairns' questions but confirming, in respect of each question, that it held no relevant information.
 3. On 26 March 2011, Mr Cairns wrote to the PCCS requesting a review of its decision. He took issue with the basis on which the PCCS had categorised and quantified letters of complaint in a particular case, believing this to call into question the veracity of the response he had received.
 4. The PCCS notified Mr Cairns of the outcome of its review on 5 April 2011, upholding its previous decision that it held no relevant information.
 5. On 7 April 2011, Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the outcome of the PCCS'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 Cairns had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



Investigation

7. On 27 May 2011, the PCCS was notified in writing that an application had been received from Mr Cairns. It was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the PCCS was asked to explain:
- the steps it had taken to establish what information (if any) it held
 - whether any relevant information had ever been held (and if so, what had happened to it)
 - means of identifying letters of complaint
 - categorisation of letters of complaint
 - guidance to staff on the recording and handling of complaints.
8. The PCCS responded on 14 June 2011 with its submissions. These submissions and those obtained from Mr Cairns, insofar as relevant, will be considered further in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr Cairns and the PCCS and is satisfied that no matter of relevance has been overlooked.
10. In terms of section 1(4) of FOISA, the information to be given to an applicant in response to a request under section 1(1) is (subject to exceptions which do not appear to be relevant in this case) that information held by the authority at the time the request is received. Where a Scottish public authority receives a request for information it does not hold, it must (in line with section 17(1) of FOISA) notify the applicant in writing that it does not hold the information.
11. Mr Cairns' request is set out in paragraph 1 above. In response to this request, the PCCS confirmed that it did not hold any information falling within the scope of any of Mr Cairns' questions. The Commissioner must now consider whether this was the appropriate response. His role in this connection is to satisfy himself as to what relevant information the PCCS actually held.
12. In his request for review, Mr Cairns challenged the veracity of the information provided by the PCCS, on the basis of his own experience of a particular case.

Decision 180/2011
Mr Eddie Cairns and
the Police Complaints Commissioner for
Scotland



13. In this case, the Commissioner has noted the explanations given to Mr Cairns in response to his requests for information. He has also had the benefit of considering the PCCS's Complaint Handling Procedures, a copy of which was supplied to him along with the authority's submissions. These Procedures do not appear to the Commissioner to give rise to any reasonable expectation that the PCCS should hold the information requested by Mr Cairns.
14. Finally, the Commissioner has considered the submissions provided by the PCCS during the investigation. These made clear that the PCCS could not be expected to hold the information Mr Cairns requested, given there were no arrangements in place to cover the situations described by Mr Cairns. It made clear, specifically, that these matters were not dealt with in its Complaint Handling Procedures, which comprised the only PCCS document outlining the complaint handling review process (and therefore would contain the information requested, if it existed). They were, however, designed to set out the process to be followed and not to specify how individual cases were to be determined.
15. The PCCS stated that its cases were considered on a case-by-case basis and that certain specific actions had been taken in the case Mr Cairns was concerned about. These had been confirmed with the relevant case officer, while other key staff had also been consulted in relation to the request. Its complaints database and hard copy case files had been searched. The PCCS described the types of information it would obtain from a police body for the purposes of an investigation, noting that this would not (and did not in this case) include the police body's categorisation of correspondence as letters of complaint. It also explained that it did not generally record whether or not individual items of correspondence so obtained were letters of complaint. If it required to identify letters of complaint, it emphasised that (given the broad definition of a complaint about the police) the only way of doing this was to read each letter.
16. Having considered carefully all the submissions made by Mr Cairns and the PCCS, the Commissioner is satisfied with the PCCS's explanations as to what information it did and did not hold. He is therefore satisfied that the PCCS was correct to give Mr Cairns notice that it held no information falling within the scope of Mr Cairns' requests.

DECISION

The Commissioner finds that the PCCS complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cairns.

Decision 180/2011
Mr Eddie Cairns and
the Police Complaints Commissioner for
Scotland



Appeal

Should either Mr Cairns or the Police Complaints Commissioner for Scotland 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.

Margaret Keyse
Head of Enforcement
5 September 2011



Appendix

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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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