

# Decision Notice



Decision 182/2010 Mr S and the Chief Constable of Strathclyde Police

Compliance with timescales

Reference No: 201001814

Decision Date: 4 November 2010

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
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## Summary

This decision considers whether the Chief Constable of Strathclyde Police (Strathclyde Police) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to an information request made by Mr S.

## Background

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1. On 7 July 2010, Mr S wrote to Strathclyde Police requesting information pertaining to their investigation into the death of a named individual.
2. Strathclyde Police responded in a letter dated 6 August 2010 withholding the requested information under the terms of a number of exemptions within Part 2 of FOISA.
3. On 9 August 2010, apparently having not yet received this response, Mr S wrote to Strathclyde Police requesting a review on the basis that they had failed to respond to his request of 7 July 2010.
4. On 11 August 2010 Strathclyde Police wrote to Mr S to check whether he had received their response letter after sending this request for review, and requesting that he clarify what particular aspect of their response he required to be reviewed.
5. On 17 August 2010, Mr S wrote to Strathclyde Police indicating that he had received the letter dated 6 August 2010 on 12 August 2010. He stated that, although this bore the date 6 August, it actually appeared to have been sent on receipt of his request for review. He indicated that he therefore considered that Strathclyde Police had not responded to his request of 7 July 2010 within the timescales laid down in FOISA. He also indicated that he now required a review of the response set out in the letter dated 6 August 2010.
6. Strathclyde Police wrote to Mr S on 13 September 2010 indicating that they would be unable to provide a response to this request for review by 15 September 2010 (the 20<sup>th</sup> working day after its receipt). They indicated that the review panel had met on 30 August 2010, but further investigation was required before the panel could make a decision.
7. Mr S did not receive a response to his request for review within the required timescale, and on 17 September 2010 wrote to the Commissioner's Office, stating that he was dissatisfied with the failure to respond his request and request for review within the timescales laid down in FOISA and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



8. The application was validated by establishing that Mr S 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 its response to that request. The case was then allocated to an investigating officer.

## Investigation

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9. On 27 September 2010, Strathclyde Police were notified in writing that an application had been received from Mr S and were invited to comment on the application.
10. Strathclyde Police responded to this invitation in a letter dated 4 October 2010. They maintained that they had complied with the timescales laid down in FOISA when responding to Mr S's initial information request, but acknowledged that they had failed to do so in responding to his request for review. Strathclyde Police advised that Mr S had been notified of the outcome of their review in a letter dated 29 September 2010. They also provided an explanation of the delay in issuing this response.
11. The investigating officer confirmed with Mr S that he had received the review response from Strathclyde Police. However he remained dissatisfied that Strathclyde Police had not provided him with a review response within 20 working and required the Commissioner to issue a decision.
12. The investigating officer requested and received additional submissions from Strathclyde Police and Mr S with respect to the posting and receipt of Strathclyde Police's response letter dated 6 August 2010. Strathclyde Police maintained was posted on that date, while Mr S challenged this claim.

## Commissioner's analysis and findings

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13. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
14. In his application, Mr S commented that he did not receive Strathclyde Police's response dated 6 August 2010 until 12 August 2010. In their submissions Strathclyde Police advised that they had received Mr S's request on 8 July 2010 and had calculated that a response should be issued by 6 August 2010. They maintained that the response was posted on 6 August 2010.



15. The Commissioner agrees with this calculation and notes that if the response was posted after 6 August 2010 then Strathclyde Police would have failed to comply with the 20 working day response timescales specified in section 10(1) of FOISA.
16. The investigating officer requested submissions and any supporting evidence from both Mr S and Strathclyde Police to inform his consideration on this point. While the responses provided were helpful, neither party was able to provide documentary evidence that would demonstrate with certainty when the letter was posted, or the date of its receipt.
17. This letter was not sent via by recorded delivery, and (having provided a detailed explanation of its mail systems, and taken steps to establish whether the date of posting of the particular letter could be confirmed) Strathclyde Police was unable to provide proof of posting, or other evidence that would support its statement that the letter was mailed on 6 August.
18. Mr S provided a serial number that was printed on the envelope. This was used by the investigating officer in searches of the internet and in discussion with a mail delivery firm but it did not elicit any information with regard to when the letter was posted or delivered.
19. It is clear that, if the letter was posted on 6 August (a Friday) and delivered on 12 August (the following Thursday), the delivery time was longer than would be expected. However, this observation does not necessarily entail that the letter was posted after this date.
20. In the absence of conclusive evidence as to the date of posting of the letter dated 6 August, the Commissioner has concluded on balance of probabilities that it was mailed on 6 August 2010. He is therefore satisfied that Strathclyde Police responded to Mr S's request for information within the 20 working days allowed by section 10(1) of FOISA, and so complied with this requirement.
21. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
22. Strathclyde Police did not provide a response to Mr S's requirement for review of 17 August 2010 until 29 September 2010. The Commissioner therefore finds that Strathclyde Police failed to comply with section 21(1) of FOISA.
23. Strathclyde Police has provided an explanation of the delay in providing this response. They advised that following an initial review conducted on 30 August, it was felt that further investigation was required involving a number of force departments before the review could be completed. They noted that Mr S was informed of the delay and that a response was supplied as soon as possible.
24. The Commissioner has noted this explanation and recognises that although there was a breach of the timescale in section 21(1) of FOISA in this case, this has now been rectified. As Strathclyde Police have now provided Mr S with a response to his request for review, the Commissioner does not require it to take any further action in relation to this particular breach in response to this decision.



## DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr S.

The Commissioner finds that Strathclyde Police complied with section 10(1) of FOISA by responding to Mr S's request within the required 20 working day timescale. However, they failed to comply with section 21(1) of FOISA by responding to Mr S's request for review outwith 20 working days. In so doing Strathclyde Police breached the requirements of Part 1 of FOISA.

Given that Strathclyde Police subsequently responded to Mr S's request for review, the Commissioner does not require Strathclyde Police to take any action in response to this failure in response to this decision.

## Appeal

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Should either Mr S or Strathclyde Police 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.

**Claire Sigsworth**  
**Deputy Head of Enforcement**  
**4 November 2010**



## 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.

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##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

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##### 21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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