

Decision Notice

Decision 236/2016: Mr Neil Vassie and the Police Service of Scotland

Electronic monitoring of traffic: failure to respond within statutory timescales

Reference No: 201601846

Decision Date: 3 November 2016



Scottish Information
Commissioner

Summary

The Police Service of Scotland (Police Scotland) were asked for the reason why they had not agreed to monitor traffic speed and usage on a specified residential road. This decision finds that Police Scotland did not receive the request or request for review, and therefore did not fail to respond under the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

Background

Date	Action
9 June 2016	Mr Vassie made an information request to Police Scotland.
	Police Scotland did not respond to the information request.
10 September 2016	Mr Vassie wrote to Police Scotland requiring a review of their failure to respond.
	Mr Vassie did not receive a response to his requirement for review.
7 October 2016	Mr Vassie wrote to the Commissioner's Office, stating that he was dissatisfied with Police Scotland's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
28 October 2016	Police Scotland were notified in writing that an application had been received from Mr Vassie and were invited to comment on the application.
28 October 2016	The Commissioner received submissions from Police Scotland. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request that at least some of the information caught by it may be environmental information as defined by regulation 2(1) of the EIRs. *In Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹, the Commissioner confirmed at paragraph 51 that where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
2. 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. The same timescale is laid down by regulation 5(2)(a) of the EIRs.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

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. The same timescale is laid down by regulation 16(4) of the EIRs.
4. Police Scotland explained that they did not receive Mr Vassie's request or his request for review. He had used an incorrect email address instead of Police Scotland's own generic FOI email address, as displayed on their website.
5. In this case, the Commissioner is satisfied that Mr Vassie's request and requirement for review were not received by Police Scotland. Accordingly, she finds that Police Scotland did not fail to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs or section 21(1) of FOISA and regulation 16(4) of the EIRs.
6. Police Scotland stated that, in order to be helpful, Mr Vassie's request would be passed to Road Policing for them to contact Mr Vassie direct. The Commissioner welcomes the step taken by Police Scotland.

Decision

The Commissioner accepts that the Police Service of Scotland (Police Scotland) did not receive Mr Vassie's request or requirement for review. Therefore, she finds that Police Scotland did not breach regulation 5(2)(a) and regulation 16(4) of the Environmental Information (Scotland) Regulations 2004 and/or section 10(1) and section 21(1) of the Freedom of Information (Scotland) Act 2002 in this case.

Appeal

Should either Mr Vassie or the Police Service of 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.

Alison Davies
Deputy Head of Enforcement

3 November 2016

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