

Decision Notice

Decision 249/2014: Mr Paul Hutcheon and the Scottish Ministers

Communications relating to stop and search report: failure to respond within statutory timescales

Reference No: 201402571

Decision Date: 28 November 2014



Scottish Information
Commissioner

Summary

On 7 August 2014, Mr Hutcheon asked the Scottish Ministers (the Ministers) for internal and external communications on the findings of the Scottish Centre for Crime and Justice Research Report into stop and search, and on the timing of the report's publication. This decision finds that the Ministers failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA), and failed to comply with Mr Hutcheon's requirement for review within the timescale set down by FOISA.

Background

Date	Action
7 August 2014	Mr Hutcheon made an information request to the Ministers.
	The Ministers did not respond to the information request.
23 September 2014	Mr Hutcheon wrote to the Ministers requiring a review of their failure to respond.
	Mr Hutcheon did not receive a response to his requirement for review.
4 November 2014	Mr Hutcheon wrote to the Commissioner's Office, stating that he was dissatisfied with the Minister's failures to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA.
10 November 2014	The Ministers were notified in writing that an application had been received from Mr Hutcheon and were invited to comment on the application.
27 November 2014	The Commissioner received submissions from the Ministers. 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 the Ministers did not provide a response to Mr Hutcheon'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 the Ministers did not provide a response to Mr Hutcheon's requirement for review within 20 working days, so the Commissioner finds that they failed to comply with section 21(1) of FOISA.

5. The Ministers acknowledged that they had not identified Mr Hutcheon's request amongst other requests received at the time. They stated that on receiving his review request it had taken some time to ensure that all relevant information had been sourced from a number of locations. The Ministers issued a response to Mr Hutcheon on 27 November 2014 and apologised for the delay.

Decision

The Commissioner finds that the Scottish Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hutcheon. In particular, they failed to respond to Mr Hutcheon's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr Hutcheon's application, given that a response was issued on 27 November 2014.

Appeal

Should either Mr Hutcheon or the Scottish Ministers 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

28 November 2014

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