

Decision Notice

Decision 197/2015: Paul Hutcheon and the Police Service of Scotland

Regulation of Investigatory Powers Act (RIPA) - journalist sources:

Failure to respond within statutory timescales

Reference No: 201502100

Decision Date: 18 December 2015



Scottish Information
Commissioner

Summary

On 27 July 2015, Paul Hutcheon asked the Chief Constable of the Police Service of Scotland (Police Scotland) for the number of occasions on which Police Scotland had a) sought and b) been granted judicial approval to acquire communications data to identify or determine the source of journalistic information. This decision finds that Police Scotland failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that Police Scotland failed to comply with Mr Hutcheon's requirement for review within the timescale set down by FOISA.

Background

Date	Action
27 July 2015	Mr Hutcheon made an information request to Police Scotland.
26 August 2015	Police Scotland responded to the information request.
31 August 2015	Mr Hutcheon wrote to Police Scotland requiring a review of their decision.
	Mr Hutcheon did not receive a response to his requirement for review.
9 November 2015	Mr Hutcheon wrote to the Commissioner's Office, stating that he was dissatisfied with Police Scotland's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
24 November 2015	Police Scotland were notified in writing that an application had been received from Mr Hutcheon and were invited to comment on the application.
10 December 2015	The Commissioner received submissions from Police Scotland. 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. Although Mr Hutcheon received a response on 26 August 2015, it is a matter of fact that Police Scotland did not respond 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. Police Scotland acknowledged that they had not responded to Mr Hutcheon's requirement for review within the statutory timescales, explaining this was due to an administrative oversight.

5. It is a matter of fact that Police Scotland 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.
6. Police Scotland responded to Mr Hutcheon's requirement for review on 15 December 2015, so the Commissioner does not require them to take any further action in relation to Mr Hutcheon's application. The Commissioner was also provided with a copy of the review response.
7. The Commissioner notes that Police Scotland apologised to Mr Hutcheon for the length of time taken to respond.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) 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, Police Scotland 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 Police Scotland to take any action in respect of these failures, in response to Mr Hutcheon's application, given that a review outcome has now been issued.

Appeal

Should either Mr Hutcheon 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.

Euan McCulloch
Deputy Head of Enforcement

18 December 2015

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info