



Decision Notice 202/2024

Peer review of investigation – failure to respond

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202400829

Summary

The Applicant asked the Authority for the findings of a report. It related to an investigation carried out on a complaint raised by a specified campaign group in connection with the investigation into the murder of Shamsudin Mahmood. This decision finds that the Authority failed to respond to the requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 29 January 2024.
2. The Authority responded to the information request on 26 February 2024.
3. On 3 March 2024, the Applicant wrote to the Authority requiring a review of its decision.
4. The Applicant did not receive a response to his requirement for review.
5. On 14 June 2024, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 17 June 2024.
8. The Commissioner received submissions from the Authority 10 September 2024. These submissions are considered below.
9. The Authority acknowledged that it had failed to respond to the Applicant's requirement for review within the timescale allowed under FOISA.
10. The Authority explained that there were various reasons why it had failed to respond to the Applicant. These were due to resources being diverted away to deal with the introduction of the Hate Crime and Public Order (Scotland) Act along with the volume of information requests being received.
11. The Authority explained that at the end of 2023, there had been a 19% increase in the volume of information requests it had received compared to the year before, and that it had received similar levels of information requests this year. It submitted that it had been difficult to keep on top of this extra work, with the same level of resource, and it noted that this past quarter had been its busiest quarter since the start of 2024.
12. 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. This is subject to qualifications which are not relevant in this case.
13. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
14. The Authority responded to the Applicant's requirement for review on 29 July 2024, so the Commissioner does not require it to take any further action in relation to the Applicant's application.
15. The Commissioner notes that the Authority apologised to the Applicant for any confusion caused by the original response but he recommends issuing an apology for its failure to comply with the timescales.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's requirement for review within the timescales laid down by section and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action.

Appeal

Should either the Applicant) or the Authority 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.

Jennifer Ross
(Acting) Deputy Head of Enforcement

16 September 2024