



# Decision Notice 107/2023

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## Criminal complaints/allegations – failure to respond

**Applicant: The Applicant**

**Authority: Police Service of Scotland**

**Case Ref: 202301181**

### Summary

The Applicant asked the Authority for a variety of information relating to the number of complaints and criminal allegations made against the Authority over a five-year period. This decision finds that the Authority failed to respond to the information request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

### Background

1. The Applicant made an information request to the Authority on 19 June 2023.
2. The Authority sent an acknowledgement on 19 June 2023, but it did not respond to the information request.
3. On 21 July 2023, the Applicant wrote to the Authority requiring a review of its failure to respond.
4. Despite sending a number of reminder emails to the Authority (to which the Authority provided updates), the Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 20 September 2023, 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 12 October 2023.
8. The Commissioner received submissions from the Authority on 25 October 2023. These submissions are considered below.
9. The Authority accepted that it had failed to respond to the Applicant's information request and requirement for review within the timescales allowed by FOISA.
10. The Authority explained that its failures to respond were due to the volume of complex requests it had received concerning police conduct and criminality over the last 18 months, which had resulted in a significant impact on its resources and, consequently, its ability to meet the statutory timescales set down by FOISA in some cases, including this one.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
13. 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.
14. It is also 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.
15. The Authority subsequently responded to the Applicant's information request and requirement for review on 27 and 29 September 2023, respectively. Consequently, the Commissioner does not require it to take any further action in relation to this application.
16. The Commissioner notes that the Authority has apologised to the Applicant for its failure to comply.

## 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 request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. Given that the Authority has now responded to the Applicant's information request and 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.

**Cal Richardson**  
**(Acting) Deputy Head of Enforcement**

**2 November 2023**