

Decision Notice

Decision 034/2019: Mr O and the Chief Constable of the Police Service of Scotland

Case-related information

Reference No: 201802154

Decision Date: 7 March 2019



Scottish Information
Commissioner

Summary

Police Scotland were asked for specific information relating to the investigation of a specific case. Police Scotland provided some of the information, and advised that other information was not held. Following investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 16 September 2018, Mr O made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested related to a specific police investigation and named officers later attending at court. The request was in six parts, and included:
 - a) The time spent by police officers interviewing the named witnesses.
 - b) The time spent by two named officers in activities associated with the case, from the initial detention of an individual to the completion of a "Summary of Evidence".
2. Police Scotland responded on 10 October 2018. Police Scotland provided Mr O with a notice in terms of section 17(1) of FOISA, stating they did not hold the information requested.
3. On 29 October 2018, Mr O wrote to Police Scotland, requesting a review of their decision on the basis that he believed the information in four parts of the request, including a) and b) above, should be held by Police Scotland.
4. Police Scotland notified Mr O of the outcome of their review on 28 November 2018. Police Scotland provided some information to Mr O, but maintained that they held no information falling within parts a) and b) of his request, as above.
5. On 13 December 2018, Mr O wrote to the Commissioner's Office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr O stated he was dissatisfied with the outcome of Police Scotland's review because he believed they should hold the information falling within the above parts of his request.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr O made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 22 January 2019, Police Scotland were notified in writing that Mr O had made a valid application. The case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application, and answer specific questions, with specific reference to the steps they had taken to identify and locate the information requested.
9. Police Scotland responded, maintaining they did not hold the information requested in the above parts of Mr O's request, explaining the searches carried out.
10. In his application to the Commissioner, Mr O provided submissions as to why he considered the information should be held.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr O and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Information held by Police Scotland

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
13. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
14. The Commissioner notes the submissions provided by Mr O, in which he provides reasons why he considers Police Scotland should hold the requested information.
15. In their submissions to the Commissioner, Police Scotland confirmed the position that they held no record of information requested by Mr O in parts a) and b) of his request.
16. Police Scotland confirmed the searches and enquiries they undertook to ascertain whether they held any information falling within the scope of these parts of Mr O's request, detailing the enquiries undertaken. These included consideration of the relevant notebook entries, the copy statements and consultation with the relevant officers. The conclusion of these searches and enquiries was that no information was held.
17. Having considered all relevant submissions and the terms of the request which is the subject of Mr O's application, the Commissioner accepts that Police Scotland interpreted Mr O's request reasonably and took adequate, proportionate steps in the circumstances to establish what information they held. Given the explanations and other submissions provided, he is satisfied that Police Scotland did not hold the information requested by Mr O and were correct to give him notice, in terms of section 17(1) of FOISA, that they held no information falling within these parts of his request.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr O.

Appeal

Should either Mr O or Police 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.

Margaret Keyse
Head of Enforcement

7 March 2019

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or
(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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