

# Decision Notice

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## **Decision 196/2018: Mr M and the Chief Constable of the Police Service of Scotland**

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### **Sale of Garelochhead Police Office**

Reference No: 201801314

Decision Date: 3 December 2018



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked for details of a recent sale of their former Garelochhead Police Office. Police Scotland stated that the information was exempt from disclosure under FOISA as it could be obtained from the Registers of Scotland.

The Commissioner decided Police Scotland should have verified the information had been published by the Registers of Scotland, and therefore available to the public, or disclosed the information at the time of asking.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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

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1. On 29 April 2018, Mr M made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland), in which he asked for details of the recent sale of the former Garelochhead Police Office by Police Scotland. He said the information “will be available” to the public via the public registers (and so there would be no reason to withhold it), but he asked Police Scotland to provide him with
  - a. The name of the individual/business the Police Office was sold to;
  - b. Their address;
  - c. The sale price achieved by Police Scotland;
  - d. Details of any conditions attached to the sale.
2. Police Scotland responded on 29 May 2018, applying section 25(1) of FOISA as it believed the information was available to Mr M (and members of the public) from the Registers of Scotland (RoS). Police Scotland included a weblink to the RoS website, although not to the actual information, in its reply.
3. Later that day, Mr M wrote to Police Scotland, requesting a review of their decision on the basis that to use the RoS weblink he would have to go through a registration process and also pay a fee for the information. He submitted that, if Police Scotland provided the information to him, there would be a minimal resource requirement in doing so. He believed Police Scotland were being unreasonable in not providing the information.
4. Police Scotland notified Mr M of the outcome of their review on 18 June 2018. Police Scotland stated that the information described in the request was already in the public domain and could be reasonably obtained, even if payment was necessary. They upheld the application of section 25(1).
5. On 6 August 2018, Mr M wrote to the Commissioner’s office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr M stated he was

dissatisfied with the outcome of Police Scotland's review because he thought it was unreasonable in these circumstances to have to search the register with RoS and pay a fee for the information. He later clarified (11 November 2018) that he had not been able to access the information online when he tried to do so at the time of the request.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr M 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 30 August 2018, Police Scotland were notified in writing that Mr M had made a valid application. They were asked to send the Commissioner the information withheld from Mr M. Police Scotland provided the information and 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 to answer specific questions, focusing on the application of section 25 of FOISA.
9. On 9 November 2018, Police Scotland were asked if they had checked at the time of asking whether all the information sought was available from RoS. Police Scotland provided evidence of receipt of the relevant documents by RoS (it had provided this earlier, in any event), but could not confirm checking that the information was actually accessible from RoS at the time of the request.

## Commissioner's analysis and findings

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

### Section 25(1) of FOISA - Information otherwise accessible

11. Under section 25(1) of FOISA, information which a requester can reasonably obtain, otherwise than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
12. In previous decisions, the Commissioner has made clear that when authorities consider applying section 25(1) of FOISA, they must take into account the requester's own particular circumstances before concluding that information is reasonably obtainable to them. The Commissioner's briefing<sup>1</sup> on section 25(1) of FOISA states:

*This is one of the few exemptions in FOISA where the identity of the requester is relevant. This is because the exemption applies to information which the requester (i.e. the person making the request) can reasonably obtain.*

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<sup>1</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section25/Section25.aspx>

13. Section 25 has a different purpose from other exemptions. It is not about withholding information from the public, but recognises that where information is already available to the requester, there is no need to provide an alternative right of access to it through FOISA.
14. Police Scotland submitted that it was evident from Mr M's request that he was aware of the information being available from RoS. It considered disclosure under FOISA would circumvent the recognised commercial process for access and result in a loss of income for RoS. Police Scotland believed Mr M would be able to make his request as part of his official business, so he would not be disadvantaged financially.
15. Mr M confirmed during this investigation that he had attempted, via Council computers, to search the public registers held by RoS, at the time of his request and also when he sought a review. He had been unable to obtain the information in question as it was not yet available online. He got assistance from Council officers who were well acquainted with how to search RoS records, but even then could not locate the information he required.
16. The Commissioner has no reason to doubt Mr M's claim that he attempted to get the information himself. He appears to have sought assistance from experienced staff, who should have been able to locate the information had it been there.
17. Equally, the Commissioner accepts that an application to register the transaction was received by RoS on 16 December 2017. It appears to have been assumed that, by the time of Mr M's request, some months later, the public register was up to date. This does not appear to have been the case, however.
18. It appears to be common knowledge that applications for property registration in Scotland can take periods of months to process:

<https://www.bbc.co.uk/news/uk-scotland-scotland-business-44627369>

It should not be surprising, therefore, if the public register is not up to date some time after an application in respect of a particular property has been submitted. In such circumstances, the only way to be certain a particular transaction is on the register is to check, even if that may incur a small expense. Police Scotland have acknowledged that they did not do this.

19. Given the particular circumstances here, the Commissioner is not satisfied that Police Scotland were in a position to apply the exemption in section 25(1) of FOISA with any degree of confidence. Having accepted that the information was not, in fact, accessible where Police Scotland said it was, the Commissioner must find that Police Scotland were not entitled to apply section 25(1) and failed to deal with the request in accordance with section 1(1) of FOISA.
20. Given Mr M has stated he no longer requires the information (he has obtained what he needs from other sources), the Commissioner does not require Police Scotland to take any action in this case, in response to Mr M's application.

## **Decision**

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The Commissioner finds that 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 M. He finds that Police Scotland were not entitled to apply the exemption in section 25(1) of FOISA and, in doing so, failed to deal with the request in accordance with section 1(1) of FOISA.

Given that Mr M now has the information he requires, the Commissioner does not require Police Scotland to take any action in this case, in response to Mr M's application.

## **Appeal**

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Should either Mr M 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**

**3 December 2018**

### 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.

...

(6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

(a) the provision does not confer absolute exemption; and

...

(2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

(a) section 25;

...

#### 25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

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