

# Decision Notice

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## **Decision 210/2018: Dr Derek Manson-Smith and the Chief Constable of the Police Service of Scotland**

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### **Parking consultations in Glasgow**

Reference No: 201801687

Decision Date: 20 December 2018



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked for the responses they had submitted on specified Restricted Parking Zone consultations in Glasgow. Police Scotland failed to respond to the initial request but, in their review outcome, they advised that they did not hold the information requested.

Following an investigation, the Commissioner accepted this.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a) (Time for compliance); 15 (Duty to provide advice and assistance); 17(1) (Information 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

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1. On 29 August 2018, Dr Manson-Smith made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). He asked for:
  - (i) Police Scotland's response to the consultation by Glasgow City Council (the Council) on the Yorkhill Restricted Parking Zone, which was introduced in June 2015, specifically on its proposal to introduce a cycle contra-flow in Dalnair Street between Old Dumbarton Road and the West Glasgow Ambulatory Care Hospital (Old Yorkhill), Glasgow G3.
  - (ii) Police Scotland's response to the Council on its promotion of the Downhill & Byres Road scheme of the Council's proposal to include a cycle contra-flow on Dowanside Road between Victoria Crescent Road and Byres Road, Glasgow G12.
  - (iii) Police Scotland's (perhaps Strathclyde Police's) response to the Council's proposal to introduce a cycle contra-flow on parts of West Princes Street, Woodlands, Glasgow.
2. Police Scotland failed to respond to the request.
3. On 2 October 2018, Dr Manson-Smith wrote to Police Scotland requesting a review of their decision to refuse to respond to his information request.
4. Police Scotland notified Dr Manson-Smith of the outcome of their review on 4 October 2018. In their review outcome they gave him notice, in terms of section 17(1) of FOISA, that they did not hold any of the information he had requested.
5. On 10 October 2018, Dr Manson-Smith applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Dr Manson-Smith challenged Police Scotland's statement that they did not hold information covered by parts (i) and (ii) of his request.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Dr Manson-Smith 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 1 November 2018, Police Scotland were notified in writing that Dr Manson-Smith had made a valid application 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 including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

## Commissioner's analysis and findings

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9. 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 Dr Manson-Smith and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

### Information held by Police Scotland

10. 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.
11. 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 the authority to give the applicant notice in writing to that effect.
12. Dr Manson-Smith provided the Commissioner with reasons why he considered that Police Scotland should hold the requested information. In particular, he referred to correspondence from the Council in relation to another information request, which suggested that Police Scotland would hold relevant information.
13. In their submissions to the Commissioner, Police Scotland also referred to the Council's correspondence with Dr Manson-Smith and noted that the documents he had received from the Council related to two separate issues and were not relevant to the information request made to Police Scotland.
14. Police Scotland noted that the information requested by Dr Manson-Smith related to the Yorkhill Restricted Parking Zone and the Dowanhill and Byres Road Restricted Parking Zone. They submitted that the documents disclosed to Dr Manson-Smith by the Council related to the Hyndland, Hughenden and Dowanhill Restricted Parking Zone and the Partick Restricted Parking Zone. Police Scotland stated that these are four completely separate restricted parking zones.

15. In respect of these four restricted parking zones, Police Scotland noted that Schedule 9, Part III of the Road Traffic Regulation Act 1984 placed a requirement on the Council to consult with them prior to the making of the associated traffic regulation orders.
16. Police Scotland explained that four separate consultation processes were carried out by the Council for each of these four parking zones. Police Scotland noted that the statutory consultation process does not require them to submit a response on each and every occasion; it merely offers Police Scotland the opportunity to comment on proposals prior to the making of a traffic regulation order.
17. Police Scotland told the Commissioner that they elected to submit a response to the Council in relation to the Hyndland, Hughenden and Dowanhill Restricted Parking Zone and the Partick Restricted Parking Zone. However, Police Scotland chose *not* to submit a response in relation to the Yorkhill Restricted Parking Zone and the Dowanhill and Byres Road Restricted Parking Zone.
18. The Commissioner notes that the Council's correspondence with Dr Manson-Smith clearly states that the Council did not receive any correspondence from Police Scotland for either the Yorkhill parking control scheme or for the Dowanhill and Byres Road scheme. However, the letter also states, "*During the promotion of the Dowanhill & Byres Road Scheme Police Scotland raised safety concerns over the provision of one-way except cycling along the one way streets.*" Police Scotland were asked whether they had made any verbal comments to the Council regarding this parking consultation, perhaps at a meeting or by telephone.
19. Police Scotland stated that they have no record of having raised any safety concerns with the Council in relation to the Dowanhill and Byres Road Parking Zone. They explained that the current traffic management officer has been in post since 2015, whereas the parking zone consultations referred to in the request took place in 2014. The previous traffic management officer retired several years ago and he cannot be contacted to ascertain whether he made any verbal submissions on behalf of Police Scotland.
20. The Commissioner has considered the submissions made by Police Scotland and the letter Dr Manson-Smith received from the Council, and he notes that both parties state that Police Scotland did not provide any written correspondence in response to the Yorkhill and Dowanhill and Byres Road consultations.
21. The Council's letter to Dr Manson-Smith stated that Police Scotland had raised safety concerns in relation to the Dowanhill and Byres Road Parking Zone. The Commissioner considers that it is possible that verbal comments may have been made by Police Scotland, but he accepts that Police Scotland has no record of any such comments being made. If Dr Manson-Smith requires further information regarding the source of the statement in the Council's letter, this may be something he should pursue with the Council.
22. As mentioned above, the Commissioner can only consider whether information is actually held by Police Scotland, not what information they should hold or what an applicant believes they should hold.
23. In all of the circumstances of this case, the Commissioner accepts, on the balance of probabilities, that Police Scotland does not (and did not, at the time they received the request from Dr Manson-Smith) hold any information falling within the scope of the request.
24. The Commissioner is satisfied, therefore, that Police Scotland were correct to inform Dr Manson-Smith, under section 17(1) of FOISA, that they did not hold the information he had requested.

## **Section 15 - Duty to provide advice and assistance**

25. Dr Manson-Smith expressed dissatisfaction with the lack of advice and assistance offered by Police Scotland. He argued that Police Scotland did not give him advice or assistance which would enable him to clarify his request, if necessary, to identify the information he had asked for.
26. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
27. Police Scotland contended that Dr Manson-Smith's information request clearly indicated the information that he required and therefore clarification was not necessary. Police Scotland submitted that the appropriate police department carried out appropriate searches and established that they held no relevant information pertaining to Dr Manson-Smith's information request.
28. The Commissioner has considered the terms of Dr Manson-Smith's information request. He is satisfied that the request is clearly expressed and that there was unlikely to be any dubiety as to the information requested. The Commissioner is satisfied that Police Scotland understood and interpreted the request correctly and that they did not require any additional information from Dr Manson-Smith to enable them to comply with his request.
29. Consequently, the Commissioner is satisfied that, in this case, Police Scotland did not fail to provide reasonable advice and assistance, as required by section 15(1) of FOISA.

## **Compliance with technical requirements of FOISA**

30. Dr Manson-Smith expressed dissatisfaction that Police Scotland failed to comply with the statutory timescale when responding to his information request.
31. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
32. It is a matter of fact that Police Scotland failed to respond to Dr Manson-Smith's information request within 20 working days. Consequently, the Commissioner finds that Police Scotland failed to comply with section 10(1) of FOISA.

## **Decision**

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The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to parts (i) and (ii) of the information request made by Dr Manson-Smith.

The Commissioner finds that by giving Dr Manson-Smith notice, in terms of section 17(1) of FOISA that they did not hold the information he had requested, Police Scotland complied with Part 1.

However, by failing to respond to the initial request within 20 working days, Police Scotland failed to comply with section 10(1) of FOISA.

The Commissioner does not require Police Scotland to take any action in respect of this failure in response to Dr Manson-Smith's application.

## **Appeal**

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Should either Dr Manson-Smith or the Chief Constable of 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.

**Margaret Keyse**  
**Head of Enforcement**

**20 December 2018**

## Appendix 1: Relevant statutory provisions

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### 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.
- ...

#### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- ....

#### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

#### 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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