

Decision Notice

Decision 020/2018: Mr Paul Hutcheon and the Chief Constable of the Police Service of Scotland

Secondment of officers

Reference No: 201702101

Decision Date: 22 February 2018



Summary

Police Scotland were asked for the total number of officers seconded to the National Public Order Intelligence Unit (NPOIU) during its lifetime.

Police Scotland stated that they did not have to comply with the request as the cost of doing so would exceed the £600 limit.

Following an investigation, the Commissioner upheld Police Scotland's response, but found that they did not respond to the initial request and request for review within the required timescales.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 10(1) (Time for compliance); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 21(1) (Review by a Scottish public authority)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

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 3 June 2017, Mr Hutcheon made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). He asked:

"In total, how many officers (including retired and serving) were seconded to the NPOIU during its lifetime?"
2. Police Scotland did not respond to the request.
3. On 18 July 2017, Mr Hutcheon emailed Police Scotland, noting that they had not answered his request on time, and requesting a review of this failure.
4. Police Scotland notified Mr Hutcheon of the outcome of their review on 7 September 2017. They apologised for their failure to provide a response within the statutory timescale of 20 working days. They informed Mr Hutcheon that his request was refused in line with section 12(1) of FOISA (Excessive cost of compliance). They explained that to comply with his request, they would have to manually review all records held for all individuals as far back as 1999. This would be a considerable task and would prove too costly to complete "within the cost threshold". (Police Scotland did not specify the cost threshold.)
5. On 21 November 2017, Mr Hutcheon applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Hutcheon considered that the information had been wrongly withheld.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Hutcheon made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to him for a decision.
7. On 11 December 2017, Police Scotland were notified in writing that Mr Hutcheon had made a valid application. The case was then 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. These questions focussed on the costs that they were likely to incur in complying with the request.
9. Police Scotland responded on 15 January 2018. Their submissions are considered below.

Commissioner's analysis and findings

10. 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 Hutcheon and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Section 12(1) - Excessive cost of compliance

11. Under section 12 of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). Consequently, the Commissioner has no power to order a public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.
12. The projected costs the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in:
 - (i) locating
 - (ii) retrieving, and
 - (iii) providing

the information requested in accordance with Part 1 of FOISA. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

Police Scotland's submissions

13. Police Scotland confirmed that legacy Scottish forces had seconded officers to the NPOIU over the years. They noted that officers and staff seconded to the NPOIU were not necessarily used for undercover deployments. Requests for individuals to be seconded included officers to work in areas such as intelligence development, intelligence management and other administrative and management functions.
14. Police Scotland explained that there was no way to reduce the extent of the search required in order to comply with the request. Officers and staff could have been seconded to the NPOIU from 1999 onwards (so searches would have to encompass this time period).

15. Police Scotland explained that, prior to the amalgamation of the forces on 1 April 2013, its legacy forces each used a system called SCOPE as a personnel system, supported with hard copy personnel files. Police Scotland could not be certain that all secondments were recorded in the SCOPE systems as the legacy forces had differing recording practices.

SCOPE system – pre 1 April 2013

16. Police Scotland explained that there were nine SCOPE databases utilised throughout the legacy police forces. Human Resources departments also utilised hard copy personnel records as not all personnel information could be accommodated in the SCOPE system. The data from those disparate databases was amalgamated into a single SCOPE national database (the current live SCOPE system) by August 2014.
17. Police Scotland submitted that nothing was transferred from hard copy personnel files, as all data transfers were from each of the legacy forces' Human Resources system.
18. Police Scotland stated that they had no access to the former legacy SCOPE systems.

SCOPE system post 1 April 2013

19. Police Scotland provided the Commissioner with a redacted version of a current employee record from the SCOPE system.
20. Police Scotland conducted a timed sample search of 30 random SCOPE records (held in electronic form).
21. They explained that each of the sample records were accessed and the 'Postings' tab opened and thereafter each individual posting tab was checked to see if the 'NPOIU' or 'National Public Order Intelligence Unit' was mentioned. Each check was timed using a stop watch. An average of the 30 timings was taken and this was used to calculate the time that it would take to search every SCOPE record held by Police Scotland.
22. Police Scotland stated that it would take 24.21 seconds on average to search each record. Police Scotland submitted that they have 24,000 current employee records and 34,000 leaver records.

Hourly rate

23. Police Scotland submitted that the hourly rate for the individual that would be tasked with the work was £23.43. The individual at this level was the only grade that could undertake the work as the task required special access to SCOPE. Police Scotland noted that the records contain confidential and sensitive personal information and therefore had to be undertaken by an appropriate grade of individual.
24. Having calculated the total cost and time it would take to complete the search, Police Scotland submitted that it was in excess of £600 and would take more than 40 hours.

The Commissioner's analysis and findings

25. Taking account of all the circumstances, the Commissioner is satisfied that Police Scotland have provided a reasonable explanation why it would have to manually search each of their employee records to obtain the requested information. The Commissioner is also satisfied that Police Scotland has made a reasonable estimate of the time required to consider each record and identify whether it contains information within scope of the request.

26. The Commissioner accepts that it would be appropriate for the nominated grade of individual to complete the work, given the confidential and sensitive nature of the records which would have to be reviewed.
27. The Commissioner does not accept, however, that the hourly rate specified by Police Scotland can be used to calculate the cost of complying with the request. Regulation 3(2)(b) of the Fees Regulations states that the hourly rate for staff time shall not exceed £15 per hour. Police Scotland based their calculations on an hourly rate in excess of £15.
28. The Commissioner has calculated the total cost of searching the records using an hourly rate of £15, and concludes that the cost would still exceed £600.
29. Having taken all of the above into consideration, the Commissioner is satisfied that Police Scotland were entitled to rely on section 12(1) of FOISA in relation to Mr Hutcheon's information request, and were under no obligation to comply with the request.

Section 15 of FOISA - Duty to provide advice and assistance

30. Section 15 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 proposes to make, or has made, a request for information to it.
31. Police Scotland were asked whether they could have provided additional advice and assistance to Mr Hutcheon, to help him reduce the scope of his request and bring it within the cost threshold. Police Scotland stated that Mr Hutcheon was very clear regarding the information he requested. Appropriate searches were undertaken and, due to the way the information is held on the system, there was no further advice that Police Scotland considered they could provide to Mr Hutcheon to allow him to refine his request within cost.
32. Having considered how Police Scotland holds the requested information, and the nature of Mr Hutcheon's request, the Commissioner is satisfied that there was no advice and assistance that Police Scotland could reasonably have provided to Mr Hutcheon to reduce the scope of his request and bring it within the cost threshold.

Timescales

33. 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.
34. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to qualifications which are not relevant in this case.
35. It is a matter of fact that Police Scotland did not provide a response to Mr Hutcheon's request for information of 5 June 2017 or his request for review of 18 July 2017 within 20 working days, so the Commissioner finds that they failed to comply with sections 10(1) and 21(1) of FOISA.

Decision

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 the information request made by Mr Hutcheon.

The Commissioner finds that Police Scotland were entitled to refuse to comply with Mr Hutcheon's request on the grounds of excessive cost (section 12(1) of FOISA).

However, Police Scotland failed to respond to Mr Hutcheon's request and request for review within the timescales specified in sections 10(1) and 21(1) of FOISA.

The Commissioner does not require Police Scotland to take any action in respect of these failures.

Appeal

Should either Mr Hutcheon 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

22 February 2018

Appendix 1: Relevant statutory provisions

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.

...

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

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

(b) in a case where section 1(3) applies, the receipt by it of the further information.

...

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

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