

Decision Notice



Decision 259/2013 Mr Severin Carrell and Scottish Police Authority

Scottish Police College and the Maldives

Reference No: 201300921

Decision Date: 19 November 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 21 December 2012, Mr Carrell asked the Scottish Police Services Authority (since succeeded by the Scottish Police Authority (the SPA)) for information relating to links with the Maldives Police Service. The SPA responded by providing some information, subject to redaction of personal data, stating that it did not hold other information Mr Carrell had requested. Following a review, at which point the SPA stated that it would exceed the cost threshold to respond to parts of the request, Mr Carrell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted the SPA's conclusion that it held no information in relation to certain of Mr Carrell's requests. The Commissioner was also satisfied that the cost of complying with other requests would exceed the statutory limit.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance) and 17(1) (Notice that information is not held)

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 Appendices form part of this decision.

Note: Mr Carrell's request was made to the Scottish Police Services Authority. However, the decision has been issued in the name of the Scottish Police Authority as the statutory successor to the Scottish Police Services Authority, in terms of the Scottish Police Authority Property Transfer Scheme 2013, made by the Scottish Ministers under Schedule 5 to the Police and Fire Reform (Scotland) Act 2012.



Background

1. On 21 December 2012, Mr Carrell wrote to the SPA, requesting information relating to dealings by the Scottish Police College (the SPC) with the Maldives Police Service (MPS). A full copy of the wording of Mr Carrell's request is contained Appendix 2 to this decision.
2. The SPA responded on 28 January 2013, as follows:
 - Request 1 – the SPA stated that it would cost in excess of £600 to provide all the information falling within the scope of this request, but did provide copies of correspondence between its International Department and the MPS;
 - Requests 2, 4, 5 and 6 – all information provided;
 - Requests 3 and 7 – information provided, but subject to redaction of personal data under section 38(1)(b) of FOISA;
 - Request 9 – information withheld under section 38(1)(b) of FOISA
 - Requests 8, and 10 to 18 inclusive – the SPA stated that the information requested was not held.
3. On 8 February 2013, Mr Carrell wrote to the SPA requesting a review of its decision. He believed the SPA's response that section 38(1)(b) applied to certain information contradicted its claim that there was no information held for certain other requests. He also believed the response provided to certain requests was incomplete, and did not accept the claim that no information was held in respect of certain other requests.
4. The SPA notified Mr Carrell of the outcome of its review on 28 February 2013. It provided some additional information. It also provided additional explanations of its reliance on section 17 of FOISA, including why it held no additional information falling within the scope of certain requests. For requests 11 and 12, the SPA stated that it might hold some of the information requested, but that to comply with these elements of his request would cost in excess of £600 and it was therefore not obliged to comply under section 12(1) of FOISA.
5. On 12 April 2013, Mr Carrell wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPSA's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Carrell made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



Investigation

7. On 30 May 2013, the SPA was notified in writing that an application had been received from Mr Carrell. The SPA was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
8. The SPA provided comments, some points being the subject of subsequent clarification.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Carrell and the SPA. She is satisfied that no matter of relevance has been overlooked.

Section 17

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time of the request is received, subject to certain qualifications which are not applicable in this case.
11. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
12. The specific cases where Mr Carrell believed there to be further information held fell into the following categories:
 - a. Information relating to a lunch meeting between the SPC and Police Commissioner Abdulla Riyaz in Sri Lanka in May 2012;
 - b. The SPC's communications with the British High Commission concerning or relating to the SPC's involvement with the Maldives since 1 January 2012;
 - c. Information relating to Bruce Milne, his private company and his connections/contacts with the SPC and training in the Maldives.

Category a.

13. Mr Carrell stated that the information already been released to him confirmed that a Chief Inspector Craig Dewar, who he stated had the most frequent links with the Maldives, was in Colombo at the time of this event, suggesting that there must a record of the lunch in question.



14. In response to Mr Carrell's concerns, the SPA confirmed that two members of staff did meet Mr Riyaz for a meal in May 2012. It explained that this meal took place outside working hours and was an informal lunch between individuals. The SPA confirmed that this was not an official meeting with SPA employees, and consequently no minutes or notes were taken during the lunch. The SPA also confirmed that its Finance Department had checked all the expenses forms and Government Procurement Card statements for the International Unit during this period, which confirmed that no claim has been made for the lunch in question.
15. The SPA provided details of the searches it conducted to determine whether any information was held, falling within the scope of this request.
16. In his application to the Commissioner, Mr Carrell queried why the SPA could not simply ask Chief Inspector Dewar to respond to this request, in terms of his personal memory. However, it should be noted that FOISA is limited to requests for recorded information; a public authority is not required to create information to respond to a request, nor can the Commissioner require a public authority to create information to respond to a request.
17. In all of the circumstances, the Commissioner is satisfied that the SPA took reasonable and proportionate steps to identify and locate the information which would fall within the scope of Mr Carrell's request. Given the circumstances in which this meeting took place, the Commissioner accepts that there can be no reasonable expectation that the information would be held. The Commissioner therefore accepts that it was reasonable for the SPA to conclude that it did not hold any information falling within the scope of the request.

Category b.

19. In response to his requests for details of the communications between the SPC and the British High Commission in Colombo, the SPA released one document and provided further explanation to Mr Carrell as to why no further information was held.
20. In his application, Mr Carrell stated that he had received confusing responses from the SPA in relation to this matter, verbally and in previous exchanges with its press office. He did not accept the SPA's assertion that any communications with the High Commission were verbal, with no written record.
21. To support his argument, Mr Carrell highlighted the significant time difference between the UK and Sri Lanka; the volume of recorded exchanges between the SPC and the Maldives authorities, and the nature of the exchanges (involving diplomats). In these circumstances, he argued that there must be further recorded information held.



22. The SPA submitted that, during the period specified by Mr Carrell's request, the SPC was engaged in a Scottish Government funded project in Sri Lanka. This project commenced in August 2010 and concluded in March 2013. The SPA stated that, during the lifetime of the project, members of staff and contractors typically visited Sri Lanka for periods of between 2-3 weeks at a time, on an average of seven occasions each year. The SPA explained that the High Commission was a key stakeholder and partner in this project. Given the frequency of these visits and the nature of the activities involved, there was a standing arrangement that SPC staff would meet with representatives from the High Commission at least once during each visit to Sri Lanka to discuss matters pertinent to the project. The SPA explained that these meetings normally took place at the High Commission complex in Colombo, and while the government funded project formed the main focus of discussion during these meetings, they were also used as a means for discussing issues of relevance in the Maldives, given that the SPC was also involved in the delivery of training and support to the Maldives Police Service at the time. The SPA stated that these meetings were fairly informal in nature so no minutes were taken.
23. The SPA understood that Mr Carrell made a similar request directly to the High Commission in February 2013, which confirmed that no formal documented communications were held.
24. The Commissioner finds it surprising that no further records are held in relation to these communications, given their inherent nature. However, having considered the explanations provided by the SPA, and acknowledging that one exchange falling within the scope of this request was identified and provided to Mr Carrell (and noting what has been disclosed to Mr Carrell more generally), on the balance of probabilities she accepts that the SPA was correct to conclude that it held no further information falling within the scope of that request.

Category c.

25. Mr Carrell made a series of requests relating to a named individual, Bruce Milne, previously a senior commander at the SPC, and his private training company with connections to the Maldives.

When and how did the SPA first become aware that Bruce Milne had set up a company called Learning and Solutions Ltd? (request 10)

26. The SPA stated that it had no record of when it first became aware that Bruce Milne had set up this company. The SPA acknowledged that this information might have been provided to the previous Head of International Development via email or phone call, but this individual had left the SPC several years ago and all his emails and personal files have been deleted in line with the authority's records retention policy.

When and how did the SPA first become aware that Bruce Milne was arranging security and/or police training contracts with the Maldives Police Service etc.? (request 11)

27. The SPA confirmed that there was no documented information held and explained that there was no obligation on the individual to inform the SPA of this.



Is the SPA aware of any other former members of staff at the SPC who are working for Bruce Milne or Learning and Solutions Ltd? (request 13)

28. The SPA confirmed that it did not hold details of any other former employee working for the company or Bruce Milne, explaining that it was not required to hold this information.

Did Bruce Milne at any point seek approval from or notify the SPS in writing to disclose that he was pursuing private contracts within the Maldives etc.? (request 15)

29. Again, the SPA confirmed that Mr Milne was not required to do this, and therefore no record was held.

30. The Commissioner has considered the nature of these requests and the explanations provided by the SPA. The SPA also provided details of the enquiries it made to confirm that no information was held, falling within the scope of these requests: the Commissioner accepts that these were reasonable and proportionate in the circumstances.

31. The Commissioner accepts that there could be no reasonable expectation that the SPA would hold information covered by these requests and is therefore satisfied that the SPA was correct to give notice under section 17(1) of FOISA in responding to these requests.

Section 12(1) – excessive cost of compliance

32. The SPA relied on this provision with respect to requests 9 and 12.

33. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information if the authority estimates that the cost of doing so will exceed the amount set in the Fees Regulations for that purpose (currently £600). The Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request exceeds this amount.

34. The projected costs that the public authority can take into account in relation to the request for information are, according to regulation 3 of the Fees Regulations, the total costs (whether direct or indirect) the authority reasonably estimates it will incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The authority may not charge for the cost of determining (i) whether it actually holds the information or (ii) whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.

35. Mr Carrell did not accept that identifying, locating and providing the information would be as complex as the SPA claimed it to be.



36. Mr Carrell stated that Mr Milne was well known at the SPC, having previously been a senior commander at the college. He stated that Mr Milne dealt primarily with a specific officer at the SPC in relation to the Maldives projects. To support his argument relating to the extent of the searches required, Mr Carrell stated that he believed there to be a small team at the SPC concerned with dealings with the Maldives, which he believed to be specific and limited. Consequently, Mr Carrell did not accept that there was a requirement for an exhaustive trawl through various record banks or archives.
37. In its submissions to the Commissioner, the SPA explained how it had interpreted Mr Carrell's requests, specifically request 9. It submitted that Mr Carrell's request sought "contacts" as opposed to communications or correspondence with Bruce Milne and it had interpreted his request accordingly. The SPA had originally sought to rely on section 38(1)(b) of FOISA to withhold this information, explaining that this was in relation to its serving staff and not Bruce Milne or his private company. It was only at review that the SPA sought to rely on section 12 of FOISA instead.
38. To support its reliance on section 12(1), the SPA stated that there was no formal central record kept of all meetings or meals within its premises. To review all the visitor logs at every relevant site would take more than 40 hours, which it submitted would exceed the cost threshold.
39. In relation to email correspondence, the SPA acknowledged that Mr Milne, as a former member of staff, communicated with a variety of individuals at the SPC on a regular basis. The SPA stated that it did not have the technical capability to search for all emails sent to and received from Mr Milne and there was no central log containing details of the sender/receiver of emails coming into and going out of its network (or containing similar details in respect of other mail or telephone calls). The SPA explained that the only way to access this information would be to access every mailbox at the SPC and search all sent and received items manually. The SPA stated that it had 297 individual mailboxes and consequently the time taken to search each mailbox would exceed the cost threshold.
40. The SPA also submitted that to simply find the contact details of all staff (past and present, taking into account that police staff rotate into and out on secondment) for the period indicated would exceed the cost threshold. It estimated that this would require more than five working days. It supplied supporting calculations for its conclusions.
41. In all the circumstances, the Commissioner is satisfied, taking account of the wording of these requests and the SPA's interpretation of them (which she accepts as reasonable in the circumstances) that identifying, locating and providing the information to Mr Carrell would incur costs in excess of £600. Therefore, she accepts that the SPA was entitled to rely upon section 12(1) of FOISA in relation to these requests.



Section 15 – the duty to advise and assist

42. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. The Scottish Ministers' *Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the Environmental Information Scotland Regulations 2004* includes guidance that, where section 12(1) applies, public authorities "may consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly."
43. On this occasion, the SPA only sought to rely on section 12 of FOISA when it conducted a review of Mr Carrell's request. There was no advice provided by the SPA at this stage to help him narrow the scope of his request.
44. Given that Mr Carrell argued that the correspondence he seeks would fall within a small team of individuals, he would appear to have the knowledge to narrow the scope of his request without advice or assistance under section 15.

DECISION

The Commissioner finds that the SPA complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by Mr Carrell.

Appeal

Should either Mr Carrell or the Scottish Police 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.

Margaret Keyse
Head of Enforcement
19 November 2013



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.

...

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

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.
- (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.

...

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.



Appendix 2

Mr Carrell's request

1. Please release all correspondence between SPC and MPS regarding current and future training courses held at, by or in conjunction with the MPS, and or discussions about any such dealings, since 1 January 2012.
2. Release all correspondence between SPC and any or all agencies, government officials or MPS staff involved with the proposed training course at the Institute of Security and Law Enforcement Studies in the Maldives since January 2012.
3. Release all correspondence with and between the UK High Commission in Colombo, Sri Lanka, and/or the Foreign and Commonwealth Office concerning or relating to the SPC's involvement with the Maldives since 1 January 2012.
4. Please disclose exactly how many MPS officer, by number and by dates of courses, who have attended or taken up training courses or tuition provided at or supplied by the SPC, for each and every year since the Maldives officers first took such a course
5. Please state the charges to the MPS for each of those courses, by year, and state whether those charges did or did not include accommodation, meals, course materials and so on.
6. Please state which courses were funded by any other source, including but not exclusively the UK High Commission in Colombo, Sri Lanka, the name of that source, and the fees paid by those sources, and whether or not those charges included accommodation, meals, course materials, and so on.
7. Please provide the names, ranks and job titles of all SPC officers who have visited the Maldives since the first training courses with the Maldives were first being arranged or agreed, by date.
8. Please confirm whether on any of those visits to the Maldives, which officer took leave or additional days off in the Maldives and before returning to duty at the SPC.
9. Please provide the details of any and all contacts between SPC staff and Bruce Milne, former head of training at Tulliallan, whether but not exclusively by telephone, email or letter, or in person, whether but not exclusively in the UK, the Maldives or in Sri Lanka, or any other place – since he left employment at SPC.
10. Please state when and how the SPC and SPSA first became aware that Bruce Milne had set up a company called Learning and Solutions Ltd and was arranging private security training contracts with Abdulla Riyaz, then a private citizen in the Maldives through his firm Gage Pvt, and the then Centre for Security and Law Enforcement Studies in the Maldives?



11. Please state when and how the SPC or SPSA first became aware that Bruce Milne was arranging security and/or police training contracts with either /and the Maldives Police Service, the Institute for Security and Law Enforcement Studies in the Maldives, or any other entity in the Maldives?
12. Please state whether Bruce Milne has attended any meetings, meals or been included in any correspondence which included members of staff at the SPC or SPSA, and if so when and where and with whom, and please disclose all that correspondence.
13. Is the SPC or SPSA aware of any other former members of staff at the SPC who are working for Bruce Milne and/or Learning Solutions? If so who?
14. Please provide a copy of the SPC or SPSA rules or code of conduct concerning private training contract or business interests of former SPC staff which are taken up after they leave SPC employment. If no such rules exist, please state that is the case, and explain what other relevant rules or regulations govern this area.
15. Did Bruce Milne at any point seek approval from or notify the SPC in writing to disclose that he was pursuing private contracts within the Maldives, or with the Maldives Police Service or any other institution in the Maldives? If so when, and to whom and with what result?
16. Please describe the identities of all the guests at the lunch meeting between the SPC and Commissioner Abdulla Riyaz in Sri Lanka in May 2012, its location and the subjects discussed. Who paid for that meal?
17. Please disclose whether any other meetings took place between Commissioner Riyaz at any other location in Sri Lanka around that time involving SPC or SPSA staff; where, when and with whom.
18. Please confirm whether any SPC or Scottish Police Services Authority member of staff – prior to the first contact between the Guardian and the SPC/SPSA on this subject – had read any reports published this year concerning the political and human rights situation in the Maldives including but not exclusively, the Commission of National Inquiry (Maldives) report into the violence of 6, 7, 8 February 2012; the Police Integrity Commission (Maldives) report on police behaviour this year; the Amnesty International report in September, “The Other Side of Paradise”; the Inter-Parliamentary Union report on the Maldives in November, and the UN Committee on Human Rights report published in July. And if so, who read those and when. And if so, what action did the SPC and SPSA take to satisfy themselves that this did not negatively impact on the SPC’s relationship with the MPS?