

Decision Notice



Decision 160/2013 Mr Michael Roulston and Stirling Council

Costs of suspending a senior police officer

Reference No: 201300658

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Rosemary Agnew

Scottish Information Commissioner

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Summary

On 8 January 2013, Mr Roulston asked Stirling Council (the Council) for information concerning the costs arising from the suspension of the Assistant Chief Constable of Central Scotland Police. The Council responded by notifying Mr Roulston that it did not hold the requested information. Following an investigation, the Commissioner accepted that the Council did not hold the information, any relevant information in its possession being held on behalf of Central Scotland Joint Police Board (the Joint Board).

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 17(1) (Notice that information is not held)

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

Background

1. On 8 January 2013, Mr Roulston wrote to the Council and asked for the following information relating to the costs incurred as a consequence of the Assistant Chief Constable of Central Scotland Police being placed on gardening leave, and the consequent temporary promotion of other officers:
 - a) the total costs incurred during the absence as far as salary, pension contribution and any other emoluments were concerned;
 - b) the cost of the enhanced salaries, pension contributions and other emoluments of the officers who were temporarily promoted, over the same period;
 - c) for the financial years beginning in April 2010, 2011, 2012, whether any reserves had been set aside to deal with the potential costs associated with the investigation that prompted the Assistant Chief Constable's absence (such as costs of investigations by other forces, legal costs (whether for the defence or prosecution) or any other expenses);
 - d) the amount of any such reserves.



Mr Roulston appreciated that some of the requested information was provided in the published accounts for 2010/11, but asked for the information for the period up to 31 March 2013 (or a projection of that figure, where applicable).

2. The Council responded on 14 January 2013 and notified Mr Roulston, in line with section 17 of FOISA, that it did not hold the requested information. It informed Mr Roulston that the information was likely to be held by Central Scotland Police, and provided a link to facilitate him in submitting a request to the Police.
3. On 14 January 2013, Mr Roulston asked the Council whether it held a copy of the accounts for 2011/12.
4. The Council responded to this request on 21 January 2013, explaining that, at the time of receiving Mr Roulston request, it did not hold a copy of the Joint Board's accounts for 2011/12. The Council informed Mr Roulston that it now had a copy of these accounts and had published them on its website, and providing him with a link to enable him to access these.
5. On 6 February 2013, Mr Roulston wrote to the Council requesting a review of its decision. He commented that the Joint Board's Treasurer was an employee of the Council, and that the Council provided financial services to the Joint Board. Mr Roulston also remarked that the published accounts were described as an abstract, which implied that more detailed information was available. Mr Roulston submitted that the Treasurer must be able to confirm the amount of any provision in these accounts, as he had requested.
6. The Council notified Mr Roulston of the outcome of its review on 6 March 2013. It upheld its original decision under section 17 of FOISA, explaining that any information which might provide a response to his request would be held by the Council's Head of Service for Governance and Resources in his capacity as Treasurer to the Joint Board. As he held the information in this capacity, it was not held by the Council for the purposes of FOISA.
7. On 7 March 2013, Mr Roulston wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Roulston made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

9. On 2 April 2013, the Council was notified in writing that an application had been received from Mr Roulston and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, the Council was asked questions with a view to clarifying the role of the Treasurer of the Joint Police Board and the relationship between the holder of that position and the Council.
10. Comments made by Mr Roulston in his application were also raised with the Council, and it was asked to respond to these.
11. In its response, the Council argued that, because any information it held and which fell within the scope of Mr Roulston's request was held on behalf of the Joint Board, it did not hold the information for the purposes of FOISA, by virtue of section 3(2)(a)(i).

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both Mr Roulston and the Council. She is satisfied that no matter of relevance has been overlooked.
13. Section 1(1) of FOISA creates a general right of access to recorded information held by a Scottish public authority, except where that right is disapplied by one of the exemptions in Part 2 of FOISA, or by another provision in Part 1 of FOISA.
14. Section 3(2)(a)(i) of FOISA makes it clear that if a Scottish public authority holds information on behalf of another person, then that information is not held by the authority for the purposes of FOISA. This is qualified by section 3(4), which relates to records transferred to the Keeper of the Records of Scotland and is not relevant in this case.
15. Where a Scottish public authority receives a request for information it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant that it does not hold the information. This applies to cases where the information is not held for the purposes of FOISA, in a technical sense (e.g., where section 3(2)(a)(i) applies), as well as those where it is simply not in the authority's possession.

Submissions from Mr Roulston

16. In his application, Mr Roulston explained that Central Scotland Police occupied a geographical area aligned with Stirling, Falkirk and Clackmannan local authorities. Collectively, these local authorities monitored Police activities through the Joint Board.



17. Accounting and financial services were, Mr Roulston submitted, provided to the Joint Board by the Council.
18. Mr Roulston also indicated that each year an abstract of accounts for the Joint Board was prepared by the Treasurer (an employee of the Council) and, in time, was made available on the Council's own website. As these accounts were described as an abstract, Mr Roulston believed more detailed information should be available from the Treasurer. He noted that the Treasurer was identified as a point of contact for information on the accounts or any other aspect of the Joint Board's finances, and believed it followed that the information he sought should be available from the Council.

Submissions from the Council

19. The Council submitted that, at local government reorganisation in 1996, the police areas for which Central Regional Council was previously the police authority (Stirling, Falkirk and Clackmannan) were amalgamated into Central Scotland Combined Police Area by virtue of The Central Scotland Combined Police Area Amalgamation Scheme Order 1995 (the Order). A copy of this Order was provided to the Commissioner.
20. The Council explained that the Order provided for the constitution of a corporate body, i.e. the Joint Board. Under the Order, the Joint Board consisted of 11 members appointed from the three constituent authorities (including the Council).
21. The Council also explained that the Order permitted the Joint Board to use the services of staff employed by the constituent authorities. The Joint Board had entered into an agreement with the Council in relation to the provision to the Board of the services of the Treasurer and related financial advice. Currently, the Council's Head of Service for Governance and Resources was appointed Treasurer, with ultimate responsibility for administration of the Joint Board's finances.
22. Regarding the preparation of the accounts referred to by Mr Roulston, the Council explained that, under section 96 of the Local Government (Scotland) Act 1973, every local authority (including the Joint Board) was obliged to make up accounts for each financial year. In addition to this, the Board is required, the Council submitted, to prepare an abstract of accounts for that financial year, which required to be audited. The Joint Board was required to provide each of the constituent authorities with a copy of the audited abstract, but this would not be available until the audited abstract was signed off (to be done not later than 30 September in each year, for the financial year ending on 31 March in that year).
23. Although the Treasurer was tasked with responsibility for administering the Joint Board's financial affairs, the Council explained that Central Scotland Police's Finance Department conducted the day to day management of the Joint Board's financial affairs (including preparation of the abstract of accounts).



24. The Council acknowledged that relevant information might be held by Council staff other than the Head of Service for Governance and Resources, but submitted that these individuals would hold the information only by virtue of the support they were required to provide him in his role as Treasurer, or for the purposes of other services they were tasked with providing under the agreement with the Joint Board referred to in paragraph 21 above. In other words, the information would still be held on behalf of the Joint Board.
25. The Council accepted that it held the abstracts of accounts published on its website, but did not accept that it followed (for the reasons given above) that it was the relevant public authority to ask for any supporting or other financial information relating to these accounts.
26. The Commissioner has carefully considered the submissions from both Mr Roulston and the Council. While it may seem to an outsider to be an unreasonable distinction to draw, she acknowledges that the Joint Board is a distinct legal entity, separate from the Council. She also accepts that the office of Treasurer is an office of the Joint Board, distinct from any office the same individual may hold within the Council. The Council also provides the Joint Board with other services related to its finances, and the Commissioner accepts that these are not services provided to the Council, even if they may be provided by Council staff. In all the circumstances, she accepts that any relevant information held by the Council (in addition to the published abstracts of accounts) would be held for the purposes of the services of the Treasurer or related financial services provided to the Joint Board. This would be information held on behalf of the Joint Board and therefore, by virtue of section 3(2)(a)(i), would not be information held by the Council for the purposes of FOISA.
27. As the Commissioner is satisfied that the Council does not (and did not, at the time it dealt with the request and requirement for review) hold any information falling within the scope of Mr Roulston's request, she has concluded that it was correct to notify Mr Roulston, in line with section 17(1) of FOISA, that it did not hold the information requested.

DECISION

The Commissioner finds that Stirling Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Roulston.



Appeal

Should either Mr Roulston or Stirling Council wish to appeal against this decision, there is an 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
6 August 2013



Appendix

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.
- ...

3 Scottish public authorities

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
- (a) by the authority otherwise than-
- (i) on behalf of another person; or
- ...

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.

...