

# Decision Notice



Decision 161/2013 Mr Michael Roulston and the Chief Constable of the Police  
Service of Scotland

Cost of temporary promotions since 2010

Reference No: 201300693  
Decision Date: 6 August 2013

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**Rosemary Agnew**  
Scottish Information Commissioner

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## Summary

On 11 January 2013, Mr Roulston asked the Chief Constable of Central Scotland Police (the Police) for information relating to the cost of certain temporary promotions made since 2010. The Police responded by providing some of the information Mr Roulston had requested, but notified him, in line with section 17(1)(b) of FOISA, that they did not hold the remaining information. Following an investigation, the Commissioner found that the Police dealt with Mr Roulston's request for information in accordance with Part 1 of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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.

As stated in the summary, Mr Roulston's information request was made to the Chief Constable of Central Scotland Police. However, this decision has been issued in the name of the Chief Constable of the Police Service of Scotland (also, for the sake of convenience, described in this decision as "the Police") as the statutory successor to the Chief Constable of Central Scotland Police under the Police and Fire Reform (Scotland) Act 2012.

## Background

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1. On 11 January 2013, Mr Roulston asked the Police for the following information relating to certain temporary promotions made from 1 July 2010, as a result of the absence of the Assistant Chief Constable:  
*For the beneficiary of the temporary promotion in each rank could you please confirm:-*
  - a) *Additional salary paid by accounting year since April 2010 (to include the projected figure for the year beginning April 2012 until the creation of a single force);*
  - b) *Additional emoluments paid for the same period whether performance bonuses, provision of funded vehicles aka "company cars";*
  - c) *Additional employer pension contributions incurred due to the salary increase;*

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- d) *The date each temporary promotion in the chain was effected and the number of years of pensionable police service for each beneficiary of the temporary promotions on that date;*
  - e) *How many ranks higher can such temporary ranks be authorised e.g. can a constable be made a temporary inspector (subject to passing the necessary exams), a sergeant to chief inspector (subject to passing the inspector's exam etc), up to and including Assistant Chief Constable to Temporary Chief Constable?*
  - f) *Is it possible to be temporarily promoted more than one rank? If it is possible, is there any limit to the number of such temporary promotions?*
2. The Police responded on 11 February 2013, providing Mr Roulston with information in response to parts d), e) and f) of his request. The Police notified Mr Roulston (in line with section 17 of FOISA) that they did not hold information in the format required to answer parts a), b) and c), which would require the creation of new information. They did, however, provide Mr Roulston with information from their annual accounts which they believed would be of assistance to him.
  3. On 12 February 2013, Mr Roulston wrote to the Police requesting a review of their decision. In particular, Mr Roulston questioned the Police's assertion that they did not hold information which could answer parts a), b) and c) of his request.
  4. The Police notified Mr Roulston of the outcome of their review on 11 March 2013, upholding their original decision without modification.
  5. On 11 March 2013, Mr Roulston wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of the Police'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 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

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7. On 28 March 2013, the Police were notified in writing that an application had been received from Mr Roulston and were invited to provide comments on the application (as required by section 49(3)(a) of FOISA). Questions focused on the steps taken to identify and locate any relevant information held by the Police, noting the information available in the Central Scotland Joint Police Board annual accounts. They were asked to comment on related points made by Mr Roulston.
8. Further submissions were sought, and obtained from, the Police during the investigation.



## Commissioner's analysis and findings

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9. 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 Police. She is satisfied that no matter of relevance has been overlooked.

### Section 17 – Information not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to qualifications which are not relevant here, that held at the time the request is received.
11. Under section 17(1) of FOISA, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
12. The Police notified Mr Roulston that they did not hold any recorded information which would address parts a), b) and c) of his request.
13. In his application, Mr Roulston commented that accounts provided in response to his request (which would usually be described as an abstract) suggested that more detailed information was available from the Police. Mr Roulston specifically questioned how the Police could say that they do not hold data for individuals in respect of their pension payments, when total pension payments were recorded in the accounts. He believed the information he required would also have been required by the Police to prepare the accounts.
14. The Police explained that their electronic payroll system recorded the details of what officers and staff had been paid, but not what they would have been paid in salaries and other emoluments had they not been temporarily promoted. Similarly, they explained, the system did not record what pension contributions would have been made if the individuals had not been promoted.
15. As a consequence of this, the Police explained, for each individual who was temporarily promoted a separate calculation would have to be undertaken to establish what each individual would have been paid for a given period if not promoted. This amount would then have to be deducted from the amount the individual was actually paid, to establish the additional cost to the Police of the temporary promotion. In undertaking these calculations, the Police submitted that they would also have to confirm whether any of the individuals would have been entitled to an increment in their substantive rank during the period: this would have to be taken into account to accurately calculate the difference between what they were paid, and they would have been paid had they not been temporarily promoted.
16. The Police explained that chief officers were entitled to be provided with a vehicle, and were required to reimburse the force for the private mileage element. Officers of superintendent rank would either have a leased vehicle or be classed as an essential user and claim reimbursement for business miles covered.

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17. A calculation would also have to be undertaken, the Police indicated, to establish what the comparable taxable benefits would have been for the different vehicle arrangements, together with what the equivalent business versus private mileage claims/re-imbursments would have been. As the individuals would have been carrying out different roles, the Police considered it highly unlikely that the nature and amount of mileage would have been the same.
18. The Police also explained that, during the period of the Assistant Chief Constable's absence, another chief officer was seconded for a significant period of time. This, the Police submitted, led to a series of further temporary promotions, unrelated to the Assistant Chief Constable's absence, but involving some of the same personnel. For the same reasons already outlined in respect of the payroll system, the Police explained that a separate calculation would be required to enable an accurate distinction to be made between the additional costs arising from these overlapping, but separate, absences.
19. The Police provided the investigating officer with evidence of the nature of the information held on their electronic payroll system.
20. The Commissioner has considered the relevant submissions from both parties, and also the relevant comments of Lord Hope of Craighead in the case of *Common Services Agency v Scottish Information Commissioner [2008] UKHL 47*<sup>1</sup>. Lord Hope distinguished the provision of information in a different form from that in which it was held (in that case, with a view to complying with the data protection principles) from work which would involve the creation of new information or the carrying out of research (which he acknowledged went beyond the provision of what was held by the authority for the purposes of FOISA).
21. Here, the Commissioner recognises that the Police did, on receipt of Mr Roulston's request, hold information relating to the relevant individual salary and pension payments, and other emoluments. Even so, she accepts that it would be necessary, to comply with parts a), b) and c) of the request, to undertake the exercises described by the Police and detailed above. Bearing in mind the effects of the other temporary promotions described above, the Commissioner finds that this would involve the exercise of a degree of skill and judgement which would amount to the provision of new information (rather than the provision of information held by the Police, as required by section 1(1) of FOISA).
22. In the particular circumstances present here, therefore, the Commissioner accepts that the Police did not, at the time they received Mr Roulston's request, hold the information required to address parts a), b) and c) of that request. Therefore, she finds that the Police were entitled to notify Mr Roulston, in terms of section 17(1) of FOISA, that they did not hold information falling within the scope of those parts of the request.

<sup>1</sup> <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>

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## **DECISION**

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

## **Appeal**

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Should either Mr Roulston or the Chief Constable of the Police Service of Scotland 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

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### 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.

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- (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.

##### 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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