

Decision Notice

Decision 006/2016: Mr Marc Ellison and the Chief Constable of the Police Service of Scotland

Consideration given to redaction of a specified report

Reference No: 201501866

Decision Date: 14 January 2016



Summary

On 29 July 2015, Mr Ellison asked the Chief Constable of Police Scotland (Police Scotland) for information concerning redactions relating to a specified report. Police Scotland failed to respond but, following a review, advised Mr Ellison that they did not hold the information he had asked for.

Following an investigation, the Commissioner accepted that Police Scotland held no relevant information.

Relevant statutory provisions

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 29 July 2015, Mr Ellison made a request for information to Police Scotland in relation to a previous decision issued by the Commissioner, *Decision 158/2015*:
<http://www.itpublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201501026.aspx>. The information requested was:
“... any correspondence and/or documents (including, but not limited to, emails/reports/ letters/ memos/ minutes etc.) that documents Police Scotland’s attempts and/ or discussions to redact the rendition flight report as requested in FOI request IM-FOI-2015-0603; where efforts were made to redact the document, tell me (a) how many people worked on that exercise, and (b) how long was spent on the task?”
2. Police Scotland did not respond and, on 14 September 2015, Mr Ellison wrote requesting a review of their decision not to respond to his request.
3. Police Scotland notified Mr Ellison of the outcome of their review on 7 October 2015. Police Scotland apologised for the delay in responding and informed Mr Ellison that they held no information within the scope of his request, applying section 17(1) of FOISA. They stated that it had not been considered possible to negate the perceived harm of disclosure by redacting the rendition report, so the redaction option had not been explored.
4. On 12 October 2015, Mr Ellison wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Ellison stated he was dissatisfied with the outcome of Police Scotland’s review because he believed information should be held by them, particularly when Police Scotland acknowledged that they did the bulk of their work in email format. He was also unhappy with the time taken to respond to his request.

Investigation

5. The application was accepted as valid. The Commissioner confirmed that Mr Ellison made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
6. On 4 November 2015, Police Scotland were notified in writing that Mr Ellison had made a valid application. The case was then allocated to an investigating officer.
7. 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, with particular reference to the steps taken to establish that they held no relevant information.

Commissioner's analysis and findings

8. 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 Ellison and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Section 17 - Notice that information is not held

9. 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 the request is received, subject to qualifications which are not applicable in this case. 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.
10. Police Scotland informed Mr Ellison that it did not hold any information falling within the scope of his request.

Submissions from Mr Ellison

11. Mr Ellison pointed out to the Commissioner that Police Scotland had stated they did not hold the information requested because the option to redact the rendition flight report was never explored or discussed. However, he noted that another information request he had submitted to Police Scotland had elicited a response stating that the bulk of their work was done by email. Mr Ellison was of the view that those Police Scotland staff who had been involved in responding to his rendition report request would have been instructed by, or corresponded with, via email. He questioned how they could have concluded that redaction would not be the solution without anyone spending time on considering whether it was an option or not. He asked how Police Scotland could have reached this conclusion if the matter had not been discussed by email.
12. Mr Ellison was of the view that Police Scotland's responses suggested one of two things: either there was never any attempt, or discussion, to redact the rendition report, or Police Scotland deliberately chose not to redact without any valid reasoning. Mr Ellison submitted that he did not require sight of the whole of any email chain discussing redaction, but only the one email that ultimately concluded why redaction was not an option.

Submissions from Police Scotland

13. Police Scotland explained that Mr Ellison's request had been allocated to their Inverness Office to research, because that office had researched and responded to his original rendition report request (request 0603). Having handled request 0603, the staff there were already aware that the option of redaction had not been explored. They had full access to all the records associated with request 0603 (held on their local shared drive and also on a national SharePoint system), however, so they were able to confirm that Police Scotland held no information falling within the scope of Mr Ellison's request.
14. Police Scotland explained that they held correspondence relating to FOI requests in a specific electronic folder under the reference number of the particular case. The search was therefore a relatively simple matter of opening the relevant folder and looking at the records in it. All the relevant records were searchable from the Inverness team's location.
15. The Inverness office carried out a search to double-check that none of the correspondence made any reference to redaction. In handling the original request, they explained, the Inverness team had consulted with colleagues from the relevant business area, but (as all of this correspondence was stored in the case folder) there was no need to go back to the business area for further information.
16. Police Scotland stated that Mr Ellison was correct in his assertion that they carried out almost all of their FOI work by email. The main reason for this, they explained, was to ensure that a full record and audit trail could be maintained for each case. Police Scotland stated that if redaction of the rendition report had been suggested, either by the FOI team or by the business area, then it was likely this would have been captured in an email. However, redaction was not mentioned at all, so there were no relevant emails identified in the search carried out.
17. Police Scotland stated that the Inverness FOI team sent request 0603 on to the business area and they (the business area) provided evidence of the harm considered likely in the event of disclosure. The response to request 0603 was then drafted on that basis.

The Commissioner's conclusions

18. The Commissioner has carefully considered all of the submissions provided by both Mr Ellison and Police Scotland, including Police Scotland's explanations of why the searches it conducted would have located any information falling within the scope of Mr Ellison's request.
19. Additionally the Commissioner has noted the submissions made to her by Police Scotland in the course of her previous investigation relating to Mr Ellison's original request for the rendition report. She notes that in their previous submissions, Police Scotland stated that disclosure of the report, whether redacted or not, would cause an unacceptable degree of harm and that disclosure of any of the information contained in the report, however limited, was not something that had been considered. Police Scotland's previous submissions stated that the report as a whole was considered exempt and that the redaction option had not been considered.
20. The Commissioner accepts that Police Scotland carried out adequate, proportionate searches in the circumstances to ascertain whether it held any information falling within the scope of Mr Ellison's request. She accepts that any information relevant to the request would have been identified using the searches described by Police Scotland. She is satisfied, therefore, that Police Scotland does not (and did not, on receiving the request) hold the

information requested. For that reason, the Commissioner accepts that Police Scotland were correct to give notice, in terms of section 17(1) of FOISA, that they did not hold the information requested by Mr Ellison.

Delay in responding

21. Mr Ellison expressed concern at the time taken by Police Scotland to respond to his request.
22. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
23. The Commissioner notes that Police Scotland failed to provide Mr Ellison with a response within this timescale and therefore failed to comply with section 10(1) in this regard. She also notes that Police Scotland acknowledged this failure and apologised to Mr Ellison in their review outcome of 7 October 2015. The matter was therefore addressed on review and is not something the Commissioner can make a finding on, or require any action in relation to, now.

Decision

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

Appeal

Should either Mr Ellison 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

14 January 2016

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.

...

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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