

# Decision Notice

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## **Decision 200/2017: Mr Adrian Fletcher and the Chief Constable of the Police Service of Scotland**

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### **Cost incurred in policing specified marches on 1 July 2017**

Reference No: 201701585

Decision Date: 1 December 2017



## Summary

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Police Scotland were asked for the cost incurred in policing specified marches held on 1 July 2017. Police Scotland responded by giving notice that they did not hold information capable of answering the request.

The Commissioner investigated and was satisfied that Police Scotland did not hold the information requested.

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

## Background

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1. On 1 July 2017, Mr Fletcher made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). He asked Police Scotland to furnish him “with the costs incurred by Police Scotland for policing the sectarian marches through Glasgow on Saturday 1 July 2017.”
2. Police Scotland responded on 4 July 2017, explaining why they did not hold the information and giving Mr Fletcher notice in terms of section 17(1) of FOISA.
3. On 4 July 2017, Mr Fletcher wrote to Police Scotland, requesting a review of their decision. He believed the cost should be held, given that the marches were policed.
4. Police Scotland notified Mr Fletcher of the outcome of their review on 2 August 2017, upholding their original decision without modification.
5. On 5 September 2017, Mr Fletcher wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Fletcher stated he was dissatisfied with the outcome of Police Scotland’s review because he was convinced duty records would show who was on duty, meaning the costs could be calculated and provided to him.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Fletcher made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 22 September 2017, Police Scotland was notified in writing that Mr Fletcher had made a valid application. The case was 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. In particular, Police Scotland were asked to provide details of searches and enquiries carried out with a view to identifying and locating any relevant information held.

## Commissioner's analysis and findings

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9. 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 Fletcher and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

### Is Information held by Police Scotland?

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. In its review outcome (2 August 2017) Police Scotland upheld its original response, confirming that it did not collate this information routinely. Police Scotland explained that where a group had been given permission to march by a local authority, the participants were exercising their constitutional rights and the policing of this was a "core policing duty" for which no charges were attributable.
13. Mr Fletcher submitted that there should still be a cost attributable to this activity. Noting that there were police officers on duty at the marches in question, he believed – unless they were working for free – there must be a cost incurred. He submitted that Police Scotland had duty records and therefore would know who was on duty.

### Searches

14. Police Scotland clarified that they did not classify marches/parades as "sectarian" or otherwise, and so interpreted the request as embracing all marches in Glasgow on the specified date. They reiterated that a march given permission by the local authority was a statutory event in which the participants were exercising their constitutional rights. Its policing was, therefore, a core policing duty and no charges were attributable: it was not, given its nature, an event for which the costs could be recovered from the organisers. Accordingly, there was no business requirement to collate or calculate such costs.
15. If any relevant raw data were held, Police Scotland continued, these would be in the form of entries in the financial system coded specifically to the event and/or recharge information relating to the event organisers. Given the nature of the event (as described above), Police Scotland explained that these would not exist. In any event, they confirmed that Police Scotland's Finance team had verified in this case that there was no relevant financial coding or recharge information for marches held in Glasgow on 1 July 2017.
16. Even where costs were recharged to event organisers, Police Scotland explained, this would not necessarily represent the full cost of policing the event. For example, officer deployment

would be charged at a fixed hourly rate rather than the actual cost taking account of each individual officer's individual pay.

17. Police Scotland acknowledged that actual deployment and salary information for individual officers could be extracted from its systems, but also described the circumstances in which additional payments would require to be calculated for individual officers. They also submitted that the actual cost of policing the marches was made up by far more than just the human resource element.
18. Police Scotland referred to the Operational Orders for the marches in question, noting that they contained no costing or other financial information. There was a cost (which could not be quantified) involved in their creation, however, and in making the associated temporary traffic restriction orders, all of which was directly attributable to the marches in question.
19. Policing the marches also involved the use of a number of vehicles, Police Scotland explained, some of them hired. The Operational Orders simply specified that these vehicles be available for use. There was no means of identifying fully the costs attributable to their actual use on the day, which depended on what happened on the day and was not captured anywhere. Other resources might have been available but not used, because they were not required in the circumstances.

### *Conclusions*

20. Having considered carefully all relevant submissions and the terms of the request, the Commissioner is satisfied that Police Scotland interpreted Mr Fletcher's request reasonably. They have made a good point that they do not – and cannot be expected to – hold information on whether a given march is "sectarian": they are required to keep the peace at all marches given permission by the local authority and it is not for them to take a view (which may well be subjective) on whether any given march is sectarian. Nonetheless, they have gone on to look at all marches held in Glasgow on that particular date, and the Commissioner considers that to have been a reasonable approach in the circumstances.
21. The Commissioner is also satisfied that Police Scotland took adequate, proportionate steps in the circumstances of this case to establish what information they held and which fell within the scope of the request. Having considered all relevant submissions received from Police Scotland, he is satisfied that data are not held in the Council's records which would be capable of addressing the request fully. He acknowledges that there is no business need to record in detail the cost of core policing activity such as this, and is satisfied that it would not be reasonable to expect the information requested to be held at the level Mr Fletcher is seeking.
22. It may be that the costs directly attributable to the pay and benefits of officers when deployed on policing the marches could be identified by cross-referencing duty and payroll records, and it is possible (though not certain) that this could be done without involving the kind of skill and judgement which would amount to the creation of new information. The Commissioner accepts, however, that these costs could not be equated with the costs of policing the events in question: there would be a good deal more to be taken into account to arrive at a figure which actually met the request, and it is fair to conclude that there will be considerable areas where the information simply is not available. In that situation, the Commissioner is satisfied that it is unnecessary (and indeed would be disproportionate) for him to explore further what may or may not be possible in relation to the human resource cost.

23. In light of this, the Commissioner is satisfied that Police Scotland do not (and did not, on receiving the request) hold the information requested by Mr Fletcher. The Commissioner is therefore satisfied that Police Scotland were correct to give Mr Fletcher notice to that effect, in terms of section 17(1) of FOISA.

## Decision

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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 Fletcher.

## Appeal

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Should either Mr Fletcher 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**

**1 December 2017**

### 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.

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#### 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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