

# Decision Notice

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**Decision 069/2019: Mr F and the Chief Constable of the Police Service of Scotland**

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## **Lost passport**

Reference No: 201900261  
Decision Date: 8 May 2019



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked about a lost passport. Police Scotland told the requester they did not hold the information. The Commissioner investigated and accepted this.

## 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 21 December 2018, Mr F made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:  
  
Full details at what place / where, at what time, day and how Grampian police found a lost passport (details provided).
2. Police Scotland responded on 18 January 2019 and gave Mr F notice, under section 17(1) of FOISA, that they did not hold the information he had requested. Police Scotland further advised that the passport had never been in the possession of Grampian Police or Police Scotland.
3. Later that day, Mr F wrote to Police Scotland requesting a review of their decision on the basis that he had a letter from the Home Office stating that the Home Office had received a telephone call from Grampian Police on 25 April 2011 indicating they had found the lost passport.
4. Police Scotland notified Mr F of the outcome of their review on 8 February 2019, upholding their original response and confirming that they held no information.
5. On 11 February 2019, Mr F wrote to the Commissioner. Mr F applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr F expressed dissatisfaction with the outcome of Police Scotland's review because they had not provided him with the information he had requested.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr F 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 20 February 2019, Police Scotland were notified in writing that Mr F had made a valid application and 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 to answer specific questions regarding their claim that the information was not 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 withheld information and the relevant submissions, or parts of submissions, made to him by both Mr F and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

### **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. This is 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. These qualifications do not apply 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 the authority to give the applicant notice to that effect.
12. The Commissioner's remit is to investigate and reach a determination on information held by a Scottish public authority, including whether any relevant information is held. He cannot comment on what a public authority ought to hold, but he can consider whether Police Scotland took adequate, proportionate steps to establish what information, if any, they held and which fell within the scope of Mr F's request.
13. The standard of proof in considering whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches and investigations carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.

### *Police Scotland's submissions*

14. Police Scotland explained that when they were researching Mr F's request they contacted the supervisor of the North East Division (legacy Grampian Police area) Lost and Found Office. The supervisor confirmed that while the passport was reported lost in May 2009, it was never located and was never in the possession of Grampian Police or Police Scotland.
15. Police Scotland submitted that when the passport was reported lost in May 2009, it had been with two other documents and all three items had been lost in the mail. At the time, Mr F was provided with a lost property report to be passed onto the relevant embassy as evidence that it had been reported lost. Police Scotland submitted that this is standard procedure.
16. Police Scotland explained that they have very little involvement with items lost in the mail, (e.g. documents such as passports / driving licenses) and whilst individuals will require a lost property report reference in order to report the loss to the relevant official body, it is incredibly rare that such a document would be handed into the police. Typically, if a lost document is found, it is either returned to the sender or returned to a Royal Mail office.
17. Police Scotland submitted that Mr F had been in touch with them regarding the lost passport since May 2009. During that time, Police Scotland submitted that Mr F had been repeatedly

advised that the passport has never been in police possession. Police Scotland maintained that their view is that the passport was lost in the mail in 2009 and has never been located.

18. Police Scotland indicated that they had not seen any evidence to support the claim that the Home Office advised Mr F that Grampian Police had called them in April 2011 to report that they had found the lost passport. Regardless of any claim to the contrary, Police Scotland reiterated their position that they had never been in possession of the lost passport. Police Scotland submitted that they hold no information regarding a phone call to the Home Office on 25 April 2011.
19. Police Scotland explained that the searches they had conducted were limited to the North East Division Lost and Found Department, which was formerly the Grampian Police Lost and Found Department. Police Scotland submitted that it became immediately clear that Grampian Police had never been in possession of the passport. Police Scotland confirmed that they hold legacy records prior to the formation of Police Scotland in 2013, and that there are current staff members, in the North East Division, who recall dealing with the matter before 2013, as Mr F's case file goes back almost 10 years.

#### *Commissioner's conclusions*

20. Having taken account of the submissions made by Police Scotland and the circumstances of how the passport was lost, the Commissioner accepts that, on the balance of probabilities, Police Scotland do not hold any information falling within the scope of Mr F's request. The Commissioner is satisfied that Police Scotland have taken all proportionate steps to identify whether or not they hold information falling within the scope of Mr F's information request, and he finds that Police Scotland were correct to give Mr F notice under section 17(1) of FOISA, that the information was not held.
21. The Commissioner understands that Mr F has a letter from the Home Office that indicates that Grampian Police notified the Home Office on 25 April 2011 that they had found the passport. The Commissioner has not seen this letter so he cannot comment on its veracity, but he notes that Police Scotland do not have any record of such a call being made. In the circumstances, even if the Commissioner had viewed this letter, it would not change his view that Police Scotland do not hold the information requested by Mr F.

## **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 F.

## **Appeal**

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Should either Mr F or the Chief Constable of the Police Service of 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**

**8 May 2019**

### 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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**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**