

Decision Notice 091/2021

Investigation costs: death of Kevin McLeod

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202000571



Scottish Information
Commissioner

Summary

Police Scotland were asked for total costs incurred by Northern Constabulary and Police Scotland between specified dates investigating the death of Kevin McLeod. Police Scotland said they did not hold the information.

Following an investigation, the Commissioner was satisfied that Police Scotland did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 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 7 October 2019, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). He asked for:
the total financial costs incurred by legacy Northern Constabulary, and Police Scotland, between 9 February 1997 and 30 September 2019, in relation to the unexplained death, and alleged murder of Mr Kevin [McLeod] ...
2. Police Scotland is statutory successor to Northern Constabulary.
3. Police Scotland responded on 4 November 2019. Police Scotland notified the Applicant, in terms of section 17(1) of FOISA, that no information was held and explained why.
4. On the same day, the Applicant wrote to Police Scotland requesting a review of its decision. He believed the information existed and was being processed for administrative purposes.
5. Police Scotland notified the Applicant of the outcome of its review on 20 December 2019, upholding the original response without modification.
6. On 25 May 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of Police Scotland's review because he did not accept that the information was not held. He said he understood that the costs incurred by Northern Constabulary were disclosed following an earlier information request. The Applicant also stated that Police Scotland had failed to provide any advice and assistance.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
8. On 27 July 2020, Police Scotland were notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.

9. 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. These related to the searches undertaken for information falling within the scope of the request, whether information could be collated from other sources to respond and regarding any information held relating to Northern Constabulary.

Commissioner's analysis and findings

10. 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 the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.
11. 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.
12. 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.
13. Police Scotland submitted that they do not generally record the resource attributed to particular investigations, either in financial terms or otherwise. On rare occasions, a cost code may be set up to capture some costs relating to an investigation, but this is usually in relation to a current, ongoing enquiry such as a murder investigation. However, that code will only capture some specific costs such as overtime or travel for management purposes as opposed to any attempt to capture the true cost of an investigation.
14. Police Scotland explained that enquiries had been made of the Homicide Governance and Review and the Finance teams and it was confirmed that a cost code had been set up latterly in relation to the investigation requested, but that no costs had been attributed to that code. Police Scotland explained that, even where a cost code had been created, the true cost of an investigation would be impossible to determine as officers may assist for part of a shift as the nature of policing necessitates officers are deployed wherever and whenever their services are most required.
15. Police Scotland also explained that, as the specific investigation spans more than 20 years and has involved two organisations (Northern Constabulary and Police Scotland) and many different departments and teams of individuals involved at varying degrees over the years from operational enquiry to case reviews, it would not be possible to attribute a cost.
16. Police Scotland confirmed that it had no operational or business need to monitor resources attributed to particular investigations.
17. Therefore, Police Scotland confirmed that it does not hold any information falling within the scope of the request and confirmed that it could not obtain or collate the information requested from other related pieces of information.

18. During the investigation, the Applicant provided copies of response letters from Northern Constabulary from 2006, which provided information on costs at that time, and copies of newspaper clippings where costs were attributed to Northern Constabulary.
19. Police Scotland were asked to consider the comments from the Applicant and to provide any further submissions in response.
20. Police Scotland stated that Northern Constabulary had not existed for over eight years and that the response letters were 15 years old. It explained that Police Scotland's retention periods for financial information were six years and three years for FOI requests. As such, they were content that no information falling within the scope of the request was held.
21. Police Scotland confirmed that, at some point in the past, Northern Constabulary had made an effort to collate costs associated with the investigation, but that this process had not been repeated in the intervening years and no information regarding a historic budget code or any FOI's which might have included relevant data were held.

The Commissioner's findings

22. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
23. Having considered the submissions provided, and having taken account of the reasons why the information would not be held, namely that there was no statutory requirement or operational reason to record the information, the Commissioner is satisfied that Police Scotland do not hold the information.
24. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that Police Scotland do not (and did not, on receiving the request), hold the information requested by the Applicant in terms of section 17(1) of FOISA.

Provision of advice and assistance

25. Under section 15(1) of FOISA, a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
26. The Applicant submitted that Police Scotland had not provided any advice or assistance in terms of progressing the application. However, the Commissioner notes that Police Scotland provided explanations within its responses to the Applicant detailing why no information was held and the processes undertaken in the course of an investigation. Police Scotland explained that information with regard to the legacy Northern Constabulary was not held and that no further costings had been conducted by Police Scotland with regard to this case.
27. In addition, the Commissioner notes that Police Scotland, in both their initial response and review outcome, invited the Applicant to contact their Information Management team directly, should they require further assistance.

28. Taking account of the above, the Commissioner is satisfied that reasonable advice and assistance was provided to the Applicant during the handling of this request and, therefore, that Police Scotland complied with section 15 of FOISA.

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 the Applicant.

Appeal

Should either the Applicant 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

9 June 2021

Appendix 1: 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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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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