

Decision Notice 133/2021

Information Sharing Agreements

Applicant: the Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202001573



Scottish Information
Commissioner

Summary

Police Scotland were asked for a copy of the memorandum of understanding relating to the multi-agency sharing agreement between themselves and Local Authority Council Education Establishments. Police Scotland stated that it did not hold this information.

Following an investigation, the Commissioner accepted that the requested information was not held.

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 2 November 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was the Memorandum of Understanding (MOU) relating to the multi-agency data sharing agreement between Police Scotland and Local Authority Council Educational Establishments.
2. Police Scotland responded on 19 November 2020. They advised that they refer to "Information Sharing Agreements" (ISA), as opposed to MOUs. Having searched their records, no results were found and they notified the Applicant, in terms of section 17 of FOISA, that they did not hold the information.
3. On 27 November 2020, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that she considered that the information was held, and reiterated the terms of her request.
4. Police Scotland notified the Applicant of the outcome of their review on 30 December 2020. They upheld their initial response that the requested information was not held, in line with section 17(1) of FOISA. They explained that organisations (including local authorities) sign up to a general agreement which supports multi-agency groups with specific purposes, as opposed to individual ISAs.
5. On the same day, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of Police Scotland's review. She considered that to lawfully process and share information there must be an ISA in place.

Investigation

6. 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.
7. On 21 January 2021, Police Scotland were notified in writing that the Applicant had made a valid application, and the case was then 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. The questions raised with Police Scotland related to the searches conducted, and why they were satisfied that the requested information was not held.

Commissioner's analysis and findings

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 the Applicant and Police Scotland. He 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 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 certain 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.

Police Scotland's submissions

11. Police Scotland explained that the Applicant had made a number of requests for access to ISAs over the last year or so. Those that are held have been provided and, where information is not held, a notice that the information is not held is provided.

Information sharing

12. Police Scotland explained that information can be shared with local authorities in writing both pro-actively and on request, for example it can be shared during multi-agency meetings, or it can be shared by a phone call etc. where emergency circumstances dictate.
13. Police Scotland submitted that it has explained to the Applicant that the absence of an ISA does not render the sharing of data unlawful, it need only be lawful in accordance with the Data Protection Act 2018 and the UK GDPR.
14. In the initial response to the Applicant, Police Scotland advised that any ISAs relating to Local Authority Education Departments may be covered by ISAs which support multi-agency groups with specific purposes.
15. They went on to explain that, for example, a regional Multi-Agency Public Protection Arrangements (MAPPA) committee will consist of a range of partners, all signing up to an ISA supporting Multi-Agency Risk Assessment Conferences (MARAC) or Multi-Agency Tasking and Co-ordination (MATAC) meetings, where the Local Authority Social Work Team will have representation.
16. Consequently, any information sharing undertaken with the Education Department will be conducted by the Social Work Department and will not require a separate ISA as they are both parts of the same organisation, working towards the same purpose.
17. Police Scotland considered that the Applicant was focussing on whether there was a formal agreement was in place, as opposed to what should be considered, i.e. whether the processing of personal data was in line with the Data Protection Act 2018 and UK GDPR.

18. In support of their submissions, Police Scotland provided the Commissioner with copies of the following documents:
- Child Protection – Inter-Agency Referral Discussions Standard Operating Procedure (Sections 11 and 12 deal with information sharing): <https://www.scotland.police.uk/spa-media/l23d3qtb/child-protection-inter-agency-referral-discussions-sop.pdf> ;
 - Child Protection Standard Operating Procedure (Sections 7 and 8 deal with inter-agency referral discussions and information sharing respectively): <https://www.scotland.police.uk/spa-media/boxmpeao/child-protection-sop.pdf>; and
 - Privacy notice – Protection and Wellbeing: <https://www.scotland.police.uk/spa-media/cw1lg3ef/privacy-notice-gdpr-protection-and-wellbeing-2021.doc> .
19. Police Scotland stated that they had directed the Applicant to above documents in previous responses, as well as the equivalents for domestic abuse and hate crime; subjects in which the Applicant has also demonstrated an interest.

Searches

20. Police Scotland stated that they had interpreted the request as seeking information regarding any current agreements and was answered on that basis.
21. Police Scotland explained that they have a register of ISAs, which includes “live” signed ISAs and also ISAs in progress.
22. Police Scotland provided a copy of the email correspondence between the FOI and Information Assurance team. This email confirmed that a full search of the Information Assurance file structure was conducted using the term “education” to identify related MOUs and other Partnership Working Agreements *(PWAs) such as Information Sharing Protocols and ISAs.
23. No current documents were located via this search, but two “legacy” documents that meet the search criteria were found:
- Children Missing from Education CME Protocol dated 2007 - document became defunct when ACPOS was dissolved on 1st April 2013.
 - Children Who Go Missing from Education dated 2006 – document became defunct when ACPOS was dissolved on 1st April 2013.
24. Police Scotland also examined the Information Assurance SharePoint registers to identify and “education” related PWAs currently being progressed. Police Scotland confirmed that no information was held. However, if the search is extended to include MAPPA, MATAC and MARAC, the following were identified:
- Seven ISAs relating to MAPPA;
 - Ten ISAs relating to MARAC;
 - Two ISAs relating to MATAC
25. Police Scotland explained that, whilst local authorities are disclosed as partners in almost all of these ISAs, none specifically mention the Education Department.

The Commissioner's findings

26. The standard 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, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, the Commissioner's role is to determine what relevant information *is actually held* by the public authority (or was, at the time it received the request).
27. Having considered the submissions provided, including the explanations provided by Police Scotland as to how they work with other agencies and share information about individuals, alongside details of the the searches they have conducted, the Commissioner is satisfied, on the balance of probabilities, that Police Scotland do not hold the requested information.

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

2 September 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.

...

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

www.itspublicknowledge.info