

Decision Notice

Decision 004/2018: Mr Paul Drury and the Chief Constable of the Police Service of Scotland

Purchase of armed equipment and ammunition

Reference No: 201701632

Decision Date: 11 January 2018



Scottish Information
Commissioner

Summary

Police Scotland were asked for information relating to the purchase of armed equipment and ammunition.

Police Scotland initially withheld the information under various exemptions in FOISA. During the investigation, Police Scotland amended their position and decided that they were not obliged to comply with the request as the cost of doing so would exceed £600.

The Commissioner found that Police Scotland had failed to respond appropriately to Mr Drury's requirement for review. He required Police Scotland to issue a new review outcome to Mr Drury.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 16(4) (Refusal of request); 21(4)(b) (Review by Scottish public authority)

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 12 July 2017, Mr Drury made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). Mr Drury asked for all information on the purchase of armed equipment and ammunition by Police Scotland in each of the last five years, to include types of weaponry, costs of equipment and details of suppliers.
2. Police Scotland responded on 8 August 2017. Police Scotland stated that they held the information requested, but withheld it under the exemptions in sections 31(1) (National security and defence), 35(1)(a) and (b) (Law enforcement) and 39(1) (Health, safety and the environment) of FOISA.
3. On 8 August 2017, Mr Drury wrote to Police Scotland, requesting a review of their decision. In his view, none of the exemptions were engaged. Additionally, he considered the public interest favoured disclosing the information.
4. Police Scotland notified Mr Drury of the outcome of their review on 7 September 2017. Police Scotland upheld their original decision without modification.
5. On 7 September 2017, Mr Drury wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Drury stated he was dissatisfied with the outcome of Police Scotland's review as he believed Police Scotland had not applied the exemptions claimed appropriately. He also considered it was in the public interest for the information to be disclosed.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Drury 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 6 October 2017, Police Scotland were notified in writing that Mr Drury had made a valid application. They were asked to send the Commissioner the information withheld from Mr Drury. In response, Police Scotland provided some information to the Commissioner. At this stage, Police Scotland indicated that they were not satisfied they held all the information requested by Mr Drury. Insofar as they held information, they considered the cost of complying with the request would exceed £600, with the result that they were not obliged to comply with the request. 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, with particular reference to the manner in which they had handled the request.
9. Police Scotland responded, acknowledging that they held all the information sought by Mr Drury. However, they considered the cost of complying with the request would exceed £600.

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 Mr Drury and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Police Scotland's handling of the request

11. As noted above, in their initial response to Mr Drury and in response to his requirement for review, Police Scotland informed him that the information requested was exempt from disclosure under various exemptions in FOISA.
12. Police Scotland's position now is that they are not obliged to comply with the request (by virtue of section 12(1) of FOISA) as they estimate the cost of doing so would exceed the amount prescribed for that purpose in the relevant Fees Regulations (currently £600).
13. The Commissioner is disappointed that Police Scotland have, at such a late stage, concluded that they are not obliged to comply with the request for these reasons. In the Commissioner's view, Police Scotland should have ensured, at an early stage, that any issues regarding the cost of compliance were identified and taken into account when responding to Mr Drury's request and requirement for review. This would have allowed Mr Drury an opportunity to properly challenge Police Scotland's position. Furthermore, it would have afforded Police Scotland an opportunity to provide advice and assistance to Mr Drury, to help him narrow the scope of the request so that the cost of compliance did not exceed the prescribed limit.
14. In the Commissioner's view, if Police Scotland were in any doubt as to whether the information requested by Mr Drury could be collated within the prescribed limit, they ought to have carried out a sampling exercise. This would have allowed them to estimate the likely cost of complying with the request and, if appropriate, issue a refusal notice under section

16(4) of FOISA. Section 16(4) is quite clear, requiring notice to be given to that effect should the public authority consider section 12(1) to be applicable.

15. It is apparent that Police Scotland failed to respond appropriately to Mr Drury's request and requirement for review. In particular, given their revised position in relation to the request, they failed to comply with sections 1(1) and 16(4) of FOISA.
16. In this case, given that Police Scotland have now decided they were not obliged to comply with the request by virtue of section 12(1), the Commissioner requires them to provide an amended review outcome to Mr Drury, in terms of section 21(4) of FOISA. He would expect such a review outcome to include full reasons for their decision on review, including justification for any provisions of FOISA considered applicable and appropriate details of any estimated costs assuming section 12(1) is being claimed. The Commissioner would also remind Police Scotland of their duty to provide advice and assistance to Mr Drury, under section 15 of FOISA.
17. The Commissioner has noted Police Scotland's failings in its handling of this request. This may be taken into account in any future action under his Enforcement Policy and Intervention Procedures.

Decision

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

The Commissioner finds that, by failing to inform Mr Drury of their conclusion that section 12(1) of FOISA applied, Police Scotland failed to comply with sections 1(1) and 16(4) of FOISA.

The Commissioner requires Police Scotland to provide an amended response to Mr Drury's requirement for review, in terms of section 21(4)(b) of FOISA, by **26 February 2018**.

Appeal

Should either Mr Drury 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.

Enforcement

If the Chief Constable of the Police Service of Scotland (Police Scotland) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Police Scotland have failed to comply. The Court has the right to inquire into the matter and may deal with Police Scotland as if they had committed a contempt of court.

Margaret Keyse
Head of Enforcement

11 January 2018

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.

...

16 Refusal of request

...

- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.

...

21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-

...

- (b) substitute for any such decision a different decision; or

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info