

# Decision Notice

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**Decision 025/2015: Ms Jeanette Findlay and the Chief Constable of the Police Service of Scotland**

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**Event at licensed premises**

Reference No: 201402278

Decision Date: 18 February 2015



Scottish Information  
Commissioner

## Summary

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On 9 July 2014, Ms Findlay asked the Chief Constable of the Police Service of Scotland (Police Scotland) for copies of any email, letter or notes of any phone call about an event she had organised. Police Scotland disclosed some information to Ms Findlay, but did not provide her with copies of any documents. Following a review, Ms Findlay remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner found that Police Scotland failed to respond to Ms Findlay's request for information in accordance with FOISA. She found that Police Scotland did not, in fact, hold any information falling within the scope of Ms Findlay's request. In failing to tell her this, Police Scotland had failed to comply with section 17 of FOISA.

## 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 9 July 2014, Ms Findlay made an information request to Police Scotland. She requested "copies of any email, letter or notes of any phone call which relate to an event to be held in the [location stated] on [date provided] of which I am the organiser." Ms Findlay explained that, in a telephone conversation with Police Scotland, she had asked how a named officer had known of the event (which she said had not been publicly advertised). Ms Findlay explained that the officer had told her that he had received an email from a superior officer. Ms Findlay said she had later been told by the same officer that the information came from an "external party".
2. Ms Findlay made two other requests that are not the subject of this application to the Commissioner.
3. Police Scotland responded on 7 August 2014. They stated that, while FOISA provides a right of access to information, there was no right to access the documentation in which information is contained. Police Scotland disclosed to Ms Findlay that they were aware that an event was to be held at the venue on the date stated and, as was routine practice, a Licensing Officer had contacted the management to confirm details of the event taking place. They did not provide copies of any documentation containing this information.
4. On 11 August 2014, Ms Findlay wrote to Police Scotland requesting a review of their decision on the basis that they had failed to provide any information, and had not complied with the spirit of the FOISA. Ms Findlay stated she wished to have either a copy of the email or all the information included in the email such as the name, rank, and department of the sender and the name, rank and department of the recipient, together with the text of the message.
5. Police Scotland notified Ms Findlay of the outcome of their review on 8 September 2014. The review upheld the initial response without modification and made it clear that Police Scotland

considered that Ms Findlay had been given information in response to her request. Police Scotland reiterated that FOISA provides a right of access to information, not to the records in which that information is contained.

6. On 23 September 2014, Ms Findlay applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Findlay stated she was dissatisfied with the outcome of Police Scotland's review because they had not given her the information she had asked for, in terms of where the email came from and what it said.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Ms Findlay made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland was invited to comment on this application and answer specific questions, including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

## Commissioner's analysis and findings

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### General entitlement

9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Ms Findlay and Police Scotland. She is satisfied that no matter of relevance has been overlooked.
10. Section 1(1) of FOISA creates a general entitlement to request information held by a Scottish public authority, subject to a number of exemptions and provisions in FOISA.
11. Police Scotland told Ms Findlay that she was not entitled to an actual copy of the document (email, letter, etc.) that she had asked for, but just to "information". Police Scotland referred to the Court of Session case, *Glasgow City Council v Scottish Information Commissioner* [2009] CSIH 73. While Police Scotland are correct that FOISA provides a right to information and not to documents, this does not mean that authorities need only provide a summary of the information, unless that is what the applicant has specifically asked for (see section 11(2) of FOISA).
12. In asking for copies of the documents, it is clear that Ms Findlay was not asking for a summary, but for the full contents of any document falling within the scope of her request, as is her right. Even if she was not entitled to receive an actual copy of a document, she was entitled to ask for all of the information in a document (including, for example, the name of the sender and date).
13. However, during the investigation, this point became moot.

### Does Police Scotland hold information falling within the scope of the request?

14. During the investigation, Police Scotland were asked to explain what searches had been undertaken for the email in question, or other recorded information covered by the request. Police Scotland replied that the divisional Licensing Sergeant had been contacted, as the person likely to be involved in licensing matters. Police Scotland's FOI unit confirmed that

other searches had taken place, but these had not found the email or any telephone notes, etc.

15. During the investigation, Police Scotland provided several submissions to the Commissioner. They eventually confirmed that they held no recorded information that fell within the terms of Ms Findlay's request: there had never been any email concerning the event she had organised.
16. Having considered the submissions from Police Scotland, the Commissioner is satisfied that Police Scotland do not hold any recorded information falling within the scope of Ms Findlay's request. The Commissioner has considered the searches undertaken by Police Scotland and is satisfied that they were reasonable and proportionate and would have identified any information they did hold and which was covered by the terms of the request.
17. Police Scotland have acknowledged that they should have responded to Ms Findlay's request by giving notice that they did not hold any recorded information falling within the scope of her request (as required by section 17 of FOISA). They told the Commissioner that their initial response was an attempt to be helpful, but they have now acknowledged that the response did not provide the information Ms Findlay had requested, or give notice that they did not hold any recorded information covered by her request.
18. The Commissioner's remit here extends only to the consideration of whether Police Scotland actually held the relevant information requested and whether it complied with Part 1 of FOISA in responding to Ms Findlay's request. The Commissioner cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process, nor can she comment on what was said by any officer of the authority, unless that relates to compliance with Part 1 of FOISA. The Commissioner cannot comment on why Ms Findlay was informed that the source of the information about her event was an email, when this now turns out not to be the case.
19. The Commissioner finds that Police Scotland failed to give notice to Ms Findlay that they did not hold any recorded information covered by her request, as required by section 17(1) of FOISA. In this respect, they failed to comply with Part 1 of FOISA.
20. Given the explanation provided to Ms Findlay during the investigation and in this decision, the Commissioner does not require Police Scotland to take any action in respect of this failure in response to Ms Findlay's application.

## Decision

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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 Ms Findlay. Police Scotland failed to give notice under section 17(1) of FOISA that it did not hold any recorded information covered by Ms Findlay's request.

The Commissioner does not require Police Scotland to take any action in respect of this failure.

## **Appeal**

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Should either Ms Findlay 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**

**18 February 2015**

### 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.

#### 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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