

# Decision Notice



Decision 037/2012 Mr Martin McGartland and the Chief Constable of Strathclyde Police

Whether a request was repeated

Reference No: 201102135  
Decision Date: 22 February 2012

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**Kevin Dunion**  
Scottish Information Commissioner

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Doubledykes Road  
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## Summary

Mr McGartland requested from the Chief Constable of Strathclyde Police (Strathclyde Police) information concerning an internal review of their handling of a previous request for information. In response, Strathclyde Police indicated that they considered this to be a repeated request, and so (in terms of section 14(2) of FOISA) they were not obliged to respond. Following a review, in which Strathclyde Police upheld that decision, Mr McGartland remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had failed to deal with Mr McGartland's request for information in accordance with Part 1 of FOISA. The Commissioner concluded that Mr McGartland's request for information was not a repeated request, and so Strathclyde Police were not entitled to refuse that request in terms of section 14(2). He required Strathclyde Police to provide a response to Mr McGartland's request in terms other than section 14(2) of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (Vexatious or repeated requests)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. The information request under consideration in this case relates to Strathclyde Police's internal review of its handling of a previous information request that Mr McGartland had made on 21 June 2011. Strathclyde Police responded to that request (in terms of section 18 of FOISA) by refusing to confirm or deny whether the information Mr McGartland had requested existed or was held by them. Mr McGartland subsequently requested a review of that decision, and Strathclyde Police notified him of the outcome of their review on 17 August 2011.

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2. On 27 August 2011, Mr McGartland made an information request to Strathclyde Police through the Whatdotheyknow<sup>1</sup> website (the website). Only one part of that request is under consideration in this decision. In that, Mr McGartland requested all information concerning the review panel convened by Strathclyde Police's review of his previous request, including full details of panel members and full details of all "information evidence" (sic) used by them when dealing with that request.
3. Strathclyde Police responded on 27 September 2011, addressing Mr McGartland's request as two sub-parts:
  - a. all information concerning (the Review Panel) including full details of panel members and
  - b. full details of all information evidence used by them when dealing with that request.

With respect to part a, Strathclyde Police provided details of the review process and who conducted the review, but withheld the name of one individual on the basis that it was exempt from disclosure under section 38(1)(b) of FOISA (personal data).
4. With respect to part b, they indicated that consideration of matters relevant to the request of 27 August 2011 would mirror those outlined in response to the request of June 2011. They expressed the view that this request was an otherwise worded repeated request for substantially similar information, and maintained, in terms of section 14(2) of FOISA, they were not obliged to respond.
5. On 5 October 2011, Mr McGartland emailed Strathclyde Police requesting a review of their decision. Mr McGartland did not consider that Strathclyde Police had fully responded to his request.
6. Strathclyde Police notified Mr McGartland of the outcome of their review on 1 November 2011. In response to part a, they disclosed the name which had previously been withheld under section 38(1)(b). However, they upheld their previous decision that part b was a repeated request and they were not obliged to provide a response in line with section 14(2) of FOISA.
7. On 16 November 2011, Mr McGartland emailed the Commissioner, stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr McGartland had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review their response to that request. The case was then allocated to an investigating officer.

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<sup>1</sup> [www.whatdotheyknow.com](http://www.whatdotheyknow.com)



## Investigation

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9. In discussing his application, the investigating officer explained to Mr McGartland the scope of the Commissioner's investigation and the matters that could be considered in any decision issued by the Commissioner. In response, Mr McGartland confirmed that he was seeking a decision only in respect of Strathclyde Police's response to part b of his request.
10. On 5 January 2012, Strathclyde Police were notified in writing that an application had been received from Mr McGartland and were given the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Strathclyde Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested.
11. Strathclyde Police provided a submission in response, which will be considered (along with the relevant submissions provided by Mr McGartland (where relevant)) in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr McGartland and Strathclyde Police and is satisfied that no matter of relevance has been overlooked.

### Consideration of Section 14(2)

13. Section 14(2) of FOISA states:

"Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request."

14. When considering section 14(2) of FOISA, the following points need to be considered:
  - whether Mr McGartland's request of 27 August 2011 was identical or substantially similar to his request of 21 June 2011
  - whether Strathclyde Police complied with Mr McGartland's first request dated 21 June 2011 and, if so,
  - whether there was a reasonable time between the submission of the first request and the submission of the subsequent request.

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*Was the second request identical or substantially similar to the first request?*

15. Mr McGartland's first request, dated 21 June 2011, sought particular information which it is not necessary to detail in this decision. In response, Strathclyde Police refused to confirm or deny whether that information existed or was held. This decision was subsequently upheld following an internal review by Strathclyde Police.
16. In part b of Mr McGartland's request for information of 27 August 2011, he asked for full details of all "information evidence" (sic) used by the review panel when undertaking a review of Strathclyde Police's handling of his previous request for review
17. While these two requests are related, the Commissioner considers it clear that the one of 27 August 2011 was seeking different (although overlapping, to some extent) information from that of 21 June 2011.
18. He recognises that the "information evidence" (which the Commissioner has read to mean information and/or evidence) used by the review panel might include, if it were held, any information that had been sought by Mr Gartland's previous request. However, the submissions provided by Strathclyde Police have confirmed that when conducting reviews in general, a range of information will be made available to the review panel. This includes:
  - The request for information and associated request for review
  - Any information relative to that request and observations from the department /division supplying it
  - Any decision sheet used by the Force Disclosure Unit
  - Any other information deemed relevant to the application or review (such as internal or external guidance)
19. Each of these types of information would (if held in the context of the particular review of interest to him) fall outside the scope of Mr McGartland's request for information of 21 June 2011, but within the scope of that of 27 August 2011.
20. The Commissioner considers that the fact that certain information (if held) would have fallen within the scope of the second request as well as the first, does not warrant the conclusion that the second request, which was clearly drawn considerably more widely, should be treated as seeking substantially similar information.
21. Having considered the first test set out in paragraph 14 above, the Commissioner is unable to accept that part b of Mr McGartland's request of 27 August 2011 is substantially similar to that made on 21 June 2011 and so it is not necessary for him to go on to consider the other tests relevant to the application of section 14(2).
22. As the Commissioner is unable to accept that the request under consideration in this decision is a repeat request for the purposes of section 14(2) of FOISA, he finds that Strathclyde Police breached Part 1 of FOISA by refusing it on that basis.

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23. The Commissioner now requires Strathclyde Police to respond to part b of Mr McGartland's request other than in terms 14(2) of FOISA.

## DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) when dealing with the request for information that is under consideration in this decision. The Commissioner does not accept that Strathclyde Police were entitled to refuse to comply with part b of Mr McGartland's request of 27 August 2011 in terms of section 14(2) of FOISA.

The Commissioner requires Strathclyde Police to respond to Mr McGartland's request for information in line with the requirements of Part 1 of FOISA, other than in terms of section 14(2), by Tuesday 10 April 2012.

## Appeal

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Should either Mr McGartland or the Chief Constable of Strathclyde Police wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**22 February 2012**



## Appendix

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### 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 14 Vexatious or repeated requests

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.