

Decision Notice

Decision 047/2018: James Donnelly and the Chief Constable of the Police Service of Scotland

Whether request was repeated

Reference No: 201702297

Decision Date: 10 April 2018



Scottish Information
Commissioner

Summary

Police Scotland were asked for information regarding a specified incident in 2002.

Police Scotland refused to comply with the request, arguing that it was identical to previous information requests and was therefore a repeated request, as set out in section 14(2) of FOISA.

The Commissioner investigated and agreed that Police Scotland were entitled to refuse to comply with the request on the basis that it was a repeated request.

Relevant statutory provisions

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 15 October 2017, Mr Donnelly made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). He asked for information about a specified incident in 2002. In particular:
 - (i) he asked why Police Scotland took a particular course of action;
 - (ii) he asked for the probable cause that was the basis for the action taken;
 - (iii) he asked how much money this action cost the tax payer; and
 - (iv) he sought legal documentation authorising this course of action.
2. Police Scotland responded on 1 November 2017. They advised Mr Donnelly that they considered his request for information to be identical to numerous previous requests he had made, and notified him that they were not obliged to comply with a repeated request, as set out in section 14(2) of FOISA. Police Scotland also explained that they do not record information about the general costs of any specific operation or investigation.
3. On 14 November 2017, Mr Donnelly wrote to Police Scotland requesting a review of their decision.
4. Police Scotland notified Mr Donnelly of the outcome of their review on 12 December 2017. They maintained their previous reliance on section 14(2) of FOISA and advised Mr Donnelly that they also considered his request to be vexatious in terms of section 14(1) of FOISA.
5. On 15 December 2017, Mr Donnelly applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Donnelly was dissatisfied with the outcome of Police Scotland's review because they were refusing his request on the grounds it was vexatious, and he believed they had failed to investigate his wider concerns.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Donnelly 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 18 January 2018, Police Scotland were notified in writing that Mr Donnelly had made a valid application and 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 including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both Mr Donnelly and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Section 14(2) – Repeated request

10. Section 14(2) of FOSIA is set out in full in Appendix 1.
11. For section 14(2) of FOISA to apply, the following need to be considered:
 - (i) Whether the applicant's previous requests were identical or substantially similar to the requests under consideration here;
 - (ii) Whether Police Scotland complied with the applicant's previous requests; and if so,
 - (iii) Whether there was a reasonable period of time between the submission of the previous requests and the submission of the subsequent requests.

Were the requests identical or substantially similar to the previous requests?

12. Police Scotland provided copies of previous information requests submitted by Mr Donnelly, to support their position that the request under consideration was a repeated request.
13. The Commissioner notes that a request dated 6 August 2013 asked for the legal documentation authorising the course of action taken by Police Scotland during the same incident specified in the current request. Police Scotland responded to this request and they also responded to a subsequent request for review. The Commissioner notes that the wording of the request of 6 August 2013 is virtually identical to part (iv) of the current request for information.
14. Police Scotland provided a copy of a request dated 4 October 2014. In this request, Mr Donnelly asked why Police Scotland took a particular course of action and he also asked for the evidence (or probable cause) that led to that course of action. The Commissioner notes that these two requests are virtually identical to parts (i) and (ii) of Mr Donnelly's current information request. The request made on 4 October 2014 was the subject of a previous

decision from the Commissioner: *Decision 088/2015 Mr Jim Donnelly and the Chief Constable of the Police Service of Scotland*.¹

15. The third request for information provided to the Commissioner was dated 19 September 2017. In this request, Mr Donnelly asked for information on the probable cause for the action taken by Police Scotland in 2002. He also asked how much money this action had cost the taxpayer. Police Scotland responded to this request on 1 November 2017 and Mr Donnelly did not seek a review of their response. The Commissioner notes that the wording of the request made on 19 September 2017 is very similar to parts (ii) and (iii) of Mr Donnelly's current information request.
16. The Commissioner has considered the content and context of the earlier requests identified by Police Scotland. Although they are not all expressed in exactly the same terms as the current information request (15 October 2017), he is satisfied that each of the requests asked for information which is essentially the same as that requested on 15 October 2017, regarding the incident that took place in 2002.

Were the previous requests complied with?

17. Police Scotland provided the Commissioner with copies of their responses to the previous requests. Having considered the content of those responses, the Commissioner is satisfied that Police Scotland complied with the previous requests.

Has a reasonable period of time passed?

18. There is no definition of "a reasonable period of time" in FOISA: what is reasonable will depend on the circumstances of the case. However, consideration can be given to questions such as:
 - (i) Has the information changed?
 - (ii) Have the circumstances changed?
19. Police Scotland submitted that they have nothing new to add, in relation to Mr Donnelly's repeated requests. They stated that Mr Donnelly has been corresponding with them about the same incident for the last 16 years and that they have reached a stage where they have provided him with all of the advice and information in relation to the 2002 incident. They considered that the current request rehearsed the same issues, which have not changed since Mr Donnelly's previous requests.
20. The Commissioner notes that the information requested by Mr Donnelly focuses on the decision-making that preceded the 2002 incident. The Commissioner accepts that the information has not changed over the years and neither have the circumstances surrounding the request.
21. Mr Donnelly first asked for the information captured by part (iv) of his request on 6 August 2013, four years before the current request for information was made. However, the passage of time has not altered or added to the information in any way. The information that would have been captured by the request in 2013 is the same information that would be captured by the current request in 2017.
22. This also applies to the information requested in parts (i) and (ii) of the current request. The information was originally requested on 4 October 2014 and it has remained the same; the

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201500342.aspx>

passage of time has had no effect. Again, this applies to part (iii) of the current request, which was for the same information as the request made on 19 September 2017.

23. The Commissioner has some sympathy for Mr Donnelly's position and the difficulties and frustrations he has endured in trying to pursue matters relating to the 2002 incident over the last 16 years.
24. However, in all of the circumstances of this case, the Commissioner finds that Police Scotland were not obliged to comply with Mr Donnelly's request for information, and they were entitled to rely on section 14(2) of FOISA.
25. As the Commissioner has found that Police Scotland were not required to comply with Mr Donnelly's request in terms of section 14(2) of FOISA, he will not go on to consider whether the request was vexatious in terms of section 14(1) 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 Mr Donnelly.

Appeal

Should either Mr Donnelly 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

10 April 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.

...

- (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.

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