

# Decision Notice

---

## Decision 064/2018: Ms Abbi Garton and the Chief Constable of the Police Service of Scotland

---

### **Crime data: excessive costs**

Reference No: 201800249  
Decision Date: 2 May 2018



## Summary

---

Police Scotland were asked about specific types of fraud that had been reported. Police Scotland stated that complying with the request would cost more than £600 and so it was not obliged to comply.

Following an investigation, the Commissioner accepted this, but found that Police Scotland did not provide sufficient advice and assistance as required by section 15(1) of FOISA.

## Relevant statutory provisions

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

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 7 November 2017, Ms Garton made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). She asked for:

*All information regarding fake justgiving or similar crowdfunding pages reported to Police Scotland for fraud, including:*

- *the website that was reported i.e. justgiving, gofundme;*
- *the amount of money that was raised;*
- *the type of fundraiser i.e. health or business.*

2. Police Scotland responded on 5 December 2017. Police Scotland provided a refusal notice in terms of section 12(1) of FOISA, as it considered the cost of complying with the request would exceed the specified limit of £600. It explained there was no specific crime category relating to the type of incident referred to in the request. They would all be recorded under "fraud" and the only way to provide an accurate response would be to read each fraud crime report to establish if the circumstances were relevant to the request. They estimated that the exercise to retrieve the information would far exceed the cost limit set out in the Fees Regulations.

3. On 5 December 2017, Ms Garton wrote to Police Scotland and asked if they could provide a cost breakdown. She acknowledged that her request did not contain a timeframe and advised that, if it would fit within the cost limit, she would be content to limit her request to one year. She later asked how long it would take to search the reports and how much this would cost per hour, adding that Police Scotland should have the ability to conduct a keyword search.

4. On 5 December 2017, Police Scotland advised Ms Garton that they could certainly consider a new request limiting the timeframe to one year, but thought the answer was likely to be the same as there was no way to retrieve the information automatically. They advised that she was more than welcome to refine her request, but that even narrowing the request down to one month would require every crime report relating to fraud to be read. By way of example, Police Scotland noted that from 1 January to 5 December 2017, Aberdeen Division had 600 records of fraud cases. They also noted that many of the systems involved did not have the facility to conduct a keyword search of the body of the crime report.
5. On 5 December 2017, Ms Garton wrote to Police Scotland requesting a review of their decision, on the basis that she did not consider her request to have been unreasonable.
6. Police Scotland notified Ms Garton of the outcome of their review on 8 January 2018. Police Scotland again explained that any offences meeting the terms of her request would be recorded under the general classification of fraud and any attempt to thereafter sub-categorise them by particular *Modus Operandi* would involve case-by-case research of each crime report. Noting that several thousand reports would be involved for just one year, Police Scotland upheld the original response in terms of section 12(1) of FOISA.
7. On 6 February 2018, Ms Garton wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Garton stated she was dissatisfied with the outcome of Police Scotland's review because she found it hard to believe that many of the crime recording systems used by Police Scotland have no facility to conduct a keyword search of the body of the crime report, as Police Scotland had claimed. She also considered her attempts to narrow down the timeframe had been met with resistance.

## Investigation

---

8. The application was accepted as valid and allocated to an investigating officer. The Commissioner confirmed that Ms Garton 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.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 29 March 2018, the investigating officer notified Police Scotland in writing that Ms Garton had made an application. Police Scotland were invited to comment on this application and to answer specific questions. These focused on the application of section 12(1) of FOISA.
10. Police Scotland responded with submissions; these will be considered below.

## Commissioner's analysis and findings

---

11. 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 Ms Garton and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

### Section 12(1) – excessive cost of compliance

12. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5 of the

Fees Regulations). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.

13. The projected costs the authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
14. Ms Garton provided submissions to the effect that Police Scotland should be able to extract the information requested from its case management systems and questioned how Police Scotland could publish figures relative to crimes if the information requested was not collated.
15. In their response to Ms Garton's request and requirement for review, Police Scotland gave no detailed breakdown of their calculations used to estimate costs, but simply informed Ms Garton that they considered the £600 limit to have been exceeded.
16. The investigating officer asked Police Scotland to provide detailed calculations supporting their estimated costs. The investigating officer also asked for the findings from any sampling exercise conducted to test the projected costs.
17. Police Scotland submitted that section 12(1) applied to Ms Garton's request. They confirmed that they held information falling within the scope of Ms Garton's request, but argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit.
18. Police Scotland explained that they did not have a crime category for the very specific type of fraud referred to in Ms Garton's request. They explained that such crimes are recorded under the general classification of "fraud", as required by the Scottish Government Justice Department (SGJD) offence classification codes. Also, the crimes were recorded across a number of disparate crime recording systems, inherited from Police Scotland's predecessor forces. These did not all permit searching of crime report content by key word, but – in any event – it was not satisfied that it could identify suitable key words which it could be sufficiently certain would appear in each relevant report. Accordingly, the only way to ascertain which crimes were relevant to the request would be to read the circumstances of each crime recorded under the category of "fraud".
19. Having considered the explanations provided, the Commissioner accepts that the information could not be readily extracted from the systems used by Police Scotland, without examining all the crime reports categorised within their systems as "fraud". He notes the limitations of the systems inherited by Police Scotland and notes, in any event, that Police Scotland do not appear to have a business need to record crime at the level of detail specified in the request. Police Scotland cannot realistically be expected to anticipate all the categorisations of recorded crime the public may be interested in.
20. Police Scotland submitted that the published data available on-line showed that for the year 2016/2017 there were 7,811 reports of fraud received. Each of these, therefore, would need to be examined for the year in question. They explained that the work required could not be done centrally, as the recorded crimes were held across the country in a variety of local systems. Police Scotland estimated that it would take between three and five minutes to

examine each crime report, confirming that they had conducted a sample search of 20 crime reports from one area. They stated that to locate and check this sample took a total of 78 minutes.

21. Allowing three minutes to check each of the 7,811 crimes recorded in 2016/2017, Police Scotland arrived at a total of 390 hours 33 minutes. They acknowledged that the work could be conducted by the lowest grade of FOI staff, at an hourly cost of approximately £10 per hour, but this would still give an estimated total cost for the year of approximately £3,900.
22. Taking account of all the circumstances, the Commissioner is satisfied that Police Scotland have provided a reasonable estimate of the cost of complying with Ms Garton's request for information. Even if the request was limited to a timeframe of one year (noting that the request did not have a time limit), given the nature of the work required, the Commissioner accepts that the request could not have been responded to within the £600 limit.
23. Consequently, the Commissioner is satisfied that Police Scotland were entitled to rely on section 12(1) of FOISA in relation to Ms Garton's information request, and therefore were under no obligation to comply with the request.
24. Having reached this conclusion, the Commissioner notes that in their initial response and in their subsequent communications, despite being asked to do so, Police Scotland did not provide Ms Garton with any breakdown or similar explanation of the costs involved. He will now consider whether, in the absence of such information, Police Scotland responded in line with their duty to provide advice and assistance under section 15 of FOISA.

### **Section 15 - Duty to provide advice and assistance**

25. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. In terms of section 15(2), this duty is taken to be met where, in any given case, the authority conforms with the relevant guidance in the Code of Practice issued under section 60 of FOISA (the Section 60 Code).
26. The Section 60 Code<sup>1</sup> provides (at paragraph 9.4.3 in Part 2, in the version in force at the time the Ministers responded to this request and requirement for review):  
  
*When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly.*
27. The Commissioner considers this important if the public authority is to fulfil its duty to provide advice and assistance under section 15 of FOISA.
28. In her correspondence with Police Scotland, Ms Garton asked Police Scotland if they could provide her with a breakdown of the expected costs, so that she could consider reducing the scope of her request. The Commissioner notes that while Police Scotland advised that they believed the cost of providing a year's worth of data, even a month's worth, would exceed the cost limit, they did not provide Ms Garton with a breakdown of the costs.

---

<sup>1</sup> <https://beta.gov.scot/publications/foi-eir-section-60-code-of-practice/FOI%20-%20section%2060%20code%20of%20practice.pdf?inline=true>

29. In their submissions to the Commissioner, Police Scotland disputed that Ms Garton had been met with resistance, as she claimed in her application, when she sought advice in an attempt to break down the timeframe of her request. Police Scotland submitted that they had advised Ms Garton of the tasks that would be involved in responding to the request, and the likelihood that even a reduced timeframe would exceed the costs. They advised that given the numbers involved, it was not possible to provide any further assistance as to how the request could be refined to bring it within the cost limit. They acknowledged, however, that they did not give Ms Garton any detail of their calculations in responding to her, accepting that this could have been done so using the published data, as explained above.
30. The Commissioner accepts that had Police Scotland provided the detailed breakdowns (as considered above), it is likely that this would have assisted Ms Garton in understanding the response. With this in mind, even if it would have not allowed her to make a request which was likely to fall within the cost limit, the Commissioner agrees that a breakdown of the costs, including descriptions of the systems involved, should have been provided to Ms Garton in fulfilment of Police Scotland's duty under section 15(1) of FOISA.
31. Consequently, the Commissioner does not accept that Police Scotland complied fully with their duty under section 15(1) of FOISA, in not providing a breakdown of their calculations, explaining more fully how the relevant records were held. Given the calculations and explanations set out above, however, the Commissioner does not require Police Scotland to provide any further advice to Ms Garton in this area.

## Decision

---

The Commissioner finds that Police Scotland partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Garton.

The Commissioner is satisfied that Police Scotland were not obliged to comply with Ms Garton's request, given that section 12(1) of FOISA was engaged.

However, the Commissioner is not satisfied that Police Scotland complied with their duties under section 15(1) of FOISA, as they failed to provide reasonable advice and assistance to Ms Garton, to explain why they considered section 12(1) to be engaged.

## Appeal

---

Should either Ms Garton 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 May 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.

#### 12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

#### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

### Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

#### 3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
- (a) no account shall be taken of costs incurred in determining-
    - (i) whether the authority holds the information specified in the request; or
    - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and

- (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

## **5 Excessive cost - prescribed amount**

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.



**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**