

Decision Notice

Decision 092/2016: Mr Marc Ellison and the Chief Constable of the Police Service of Scotland

Invoices: Datong and Seven Technologies

Reference No: 201600463

Decision Date: 27 April 2016



Scottish Information
Commissioner

Summary

On 19 January 2016, Mr Ellison asked the Chief constable of the Police Service of Scotland (Police Scotland) for copies of invoices or details of purchases from two named companies. Police Scotland refused to confirm or deny whether they held the information, or whether the information existed, in terms of section 18(1) of FOISA.

During the investigation, Police Scotland withdrew their reliance on section 18 of FOISA and informed Mr Ellison that they did not in fact hold the information he had requested. As a result, the Commissioner finds that Police Scotland were not entitled to respond in terms of section 18.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 18 (Further provisions as respects responses to request)

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 19 January 2016, Mr Ellison made a request for information to Police Scotland. The information requested was:
Electronic copies of invoices for the purchase of items from the companies Datong and Seven Technologies between 1 April 2013 and 19 January 2016. If electronic copies cannot be provided, please provide detail: date of purchase, item description and cost.
2. Police Scotland responded on 18 February 2016, notifying Mr Ellison (in accordance with section 18 of FOISA) that they could neither confirm nor deny whether they held the information, or whether it existed. They explained why they considered confirming or denying would be contrary to the public interest and stated that, if held, the information would be exempt from disclosure in terms of sections 35 and 39(1) of FOISA.
3. On 20 February 2016, Mr Ellison wrote to Police Scotland requesting a review of their decision. He did not accept that the exemptions applied and did not accept their public interest arguments in relation to section 18.
4. Police Scotland notified Mr Ellison of the outcome of their review on 15 March 2016. Police Scotland confirmed the response in terms of section 18 of FOISA was appropriate.
5. On 15 March 2016, Mr Ellison wrote to the Commissioner. Mr Ellison applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Ellison stated he was dissatisfied with the outcome of Police Scotland's review and explained why.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Ellison made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
7. On 31 March 2016, Police Scotland were notified in writing that Mr Ellison had made a valid application. The case was then 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. On 6 April 2016, Police Scotland were invited to comment on this application and answer specific questions, with particular reference to their application of section 18 of FOISA.
9. Police Scotland responded on 22 April 2016, confirming that they were withdrawing their reliance on section 18 of FOISA. They confirmed that they had provided Mr Ellison with a further review outcome explaining that they did not hold the information he had requested.
10. Mr Ellison confirmed receipt of the further response, but wished a decision to be issued.

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 her by both Mr Ellison and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Section 18 of FOISA – “neither confirm nor deny”

12. As mentioned above, in their response and response to review, Police Scotland refused to confirm or deny whether they held any information falling within the scope of Mr Ellison's request, or whether such information existed. Police Scotland reconsidered their position during the investigation, providing Mr Ellison with an alternative response in terms of section 17 of FOISA (Notice that information is not held).
13. Section 18 allows Scottish public authorities to refuse to reveal whether they hold information (or whether it exists) in the following limited circumstances:
 - a request has been made to the authority for information which may or may not be held by the authority;
 - if the information were held by the authority (and it need not be), the authority could give a refusal notice under section 16(1) of FOISA, on the basis that the information was exempt information by virtue of any of the exemptions in sections 28 to 35, 38, 39(1) or 41 of FOISA;
 - the authority considers that to reveal whether the information exists or is held would be contrary to the public interest.
14. As mentioned above, in their response to the Commissioner, Police Scotland confirmed they were withdrawing their reliance upon section 18(1) of FOISA and that they had provided Mr Ellison with an alternative response in terms of section 17(1) of FOISA.
15. In the circumstances, the Commissioner must conclude that Police Scotland do not consider themselves to have been entitled to apply section 18 in their earlier responses to Mr Ellison. As a result, the Commissioner must that Police Scotland failed to comply with section 1(1) of

FOISA in responding to Mr Ellison in terms of section 18. Given that Police Scotland have provided a further response to Mr Ellison, the Commissioner does not require Police Scotland to take any action.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Ellison. She finds that Police Scotland were not entitled to refuse to reveal, in terms of section 18 of FOISA, whether the requested information existed or was held by them.

Given that Police Scotland have since informed Mr Ellison that they do not hold the information he has requested, the Commissioner does not require them to take any action in respect of this failure.

Appeal

Should either Mr Ellison 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.

Margaret Keyse
Head of Enforcement
27 April 2016

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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18 Further provision as respects responses to request

- (1) Where, if information existed and was held by a Scottish public authority, the authority could give a refusal notice under section 16(1) on the basis that the information was exempt information by virtue of any of sections 28 to 35, 38, 39(1) or 41 but the authority considers that to reveal whether the information exists or is so held would be contrary to the public interest, it may (whether or not the information does exist and is held by it) give the applicant a refusal notice by virtue of this section.

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