

Decision Notice

Decision 092/2017: Mr Paul Delamore and the Chief Constable of the Police Service of Scotland

Case information – death of William McRae

Reference No: 201700635

Decision Date: 5 June 2017



Summary

Police Scotland were asked for information relating to the death of William McRae in 1985 and the review of the case during 2010 to 2012. Police Scotland informed Mr Delamore that they did not hold the information requested.

Following an investigation the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 21 July 2015, Mr Delamore made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested related to the death of Mr William McRae in April 1985 and included the following:
 - a) *Confirmation that the former Northern Constabulary has made efforts to establish whether or not Mr McRae was of interest to the Security Service or Special Branch, or under surveillance from such organisations, either at the approximate time of his car crash; the year leading up to his death; or any record of interest or surveillance into Mr McRae prior to these periods.*
 - b) *If Police Scotland, upon undertaking a review of the case during the period of 2010-2012 ... tried to again establish if Mr McRae was of interest to the security services, the security nexus or any police services in the United Kingdom?*

Mr Delamore stated he only wished confirmation as to whether Police Scotland held information, to show that such enquiries had taken place.

2. On 10 September 2015, Mr Delamore wrote to Police Scotland, requesting a review on the basis that they had failed to respond to his request.
3. Police Scotland notified Mr Delamore of the outcome of their review on 22 September 2015. They accepted they had failed to respond to the request on time, in terms of section 10(1) of FOISA, and apologised for this failure. In relation to the two requests under investigation, Police Scotland responded in terms of section 18 of FOISA, neither confirming nor denying that the information existed or was held.
4. On 22 March 2016, Mr Delamore wrote to the Commissioner. Mr Delamore applied to the Commissioner for a decision in terms of section 47(1) of FOISA. In summary, he was dissatisfied with the response in terms of section 18 of FOISA.

5. During the investigation into Mr Delamore's application of 22 March 2016, Police Scotland withdrew their reliance upon section 18 of FOISA. They provided Mr Delamore with a new review outcome on 3 October 2016. Police Scotland informed Mr Delamore that they did not hold any information falling within the scope of the part a) or b) of his request. Having received an updated response, Mr Delamore withdrew his application of 22 March 2016.
6. On 3 April 2017, Mr Delamore wrote to the Commissioner again. Mr Delamore applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with Police Scotland's response 3 October 2016 as he did not accept that Police Scotland did not hold the information.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Delamore 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. On 7 April 2017, Police Scotland were notified in writing that Mr Delamore had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 27 April 2017, Police Scotland were invited to comment on this application and to answer specific questions, in particular to explain the steps they had taken to identify and locate the information requested.
10. Police Scotland responded, providing submissions in support of their position that they did not hold information falling within the scope of the request under investigation.

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 Delamore and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Information held by Police Scotland

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
13. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
14. The Commissioner notes the submissions provided by Mr Delamore, in which he provides reasons why he considers Police Scotland should hold the requested information. In particular, Mr Delamore referred the Commissioner to information already within the public domain.
15. In its submissions to the Commissioner, Police Scotland confirmed the position regarding where information relating to the investigation into the death of Mr McRae was held, in

particular the files complied during the review of the case conducted between 2010 and 2012.

16. Police Scotland confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Mr Delamore's request, detailing the places searched. These included searches of relevant electronic and paper records, and consultation with relevant staff. Police Scotland provided supporting evidence confirming the outcomes of their searches. The conclusion of the searches and enquiries was that no information was held which would allow them to show whether such enquiries, as specified in Mr Delamore's request, had taken place.
17. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that Police Scotland interpreted Mr Delamore's request reasonably and took adequate, proportionate steps in the circumstances to establish what information they held. Given the explanations provided, she is satisfied that Police Scotland did not, on receipt of the information request, hold the information requested by Mr Delamore.
18. The Commissioner is therefore satisfied that Police Scotland were correct to give Mr Delamore notice, in terms of section 17(1) of FOISA, that they held no information falling within the scope his request.

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 Delamore.

Appeal

Should either Mr Delamore 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
Acting Scottish Information Commissioner

5 June 2017

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.

...

(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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