

# Decision Notice



Decision 100/2014 Mr Michael Roulston and the Scottish Police Authority

Transitional arrangements for ACPOS rank officers

Reference No: 201400272  
Decision Date: 6 May 2014

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**Rosemary Agnew**  
Scottish Information Commissioner

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## Summary

On 18 March 2013, Mr Roulston asked the Scottish Police Authority (the SPA) for information on the transitional arrangements for ACPOS rank officers. The SPA responded with some information, but stated that it did not hold other information. Following an investigation, the Commissioner accepted that the SPA did not hold any further information covered by the request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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. On 18 March 2013, Mr Roulston wrote to the SPA requesting the following information, with reference to the numbers of senior police officers required in Scotland before and after the implementation of the Police and Fire Reform (Scotland) Act 2012 on 1 April 2013:
  - a) How many officers (excluding those who have been selected for one of the new posts in the single force) will continue to be paid on 1/4/13?
  - b) Could you please confirm the numbers in each rank?
  - c) Could you please confirm the dates that contracts expire for such Chief and Deputy Chief Constables respectively?
  - d) For all ranks, could you please give the dates of retirement for any officers who have indicated that they will leave before the anticipated date, whether employed on a contractual or permanent basis?
2. The SPA responded on 15 April 2013, asking Mr Roulston to clarify the ranks of officers for which he was seeking information in points a) and b). On the same day, Mr Roulston confirmed that he wished the information for “all ACPOS ranks.”



3. The SPA responded on 17 and 26 April 2013. For points a), b) and d), the SPA stated that it did not hold the information. It confirmed that the Police Service of Scotland (Police Scotland) held the information and provided contact details. The 26 April response purported to address point 3.
4. On 30 April 2013, Mr Roulston wrote to the SPA, requesting a review of its decision. He did not consider the request to have been read or addressed properly, stating:  
*"... I am not interested in those officers who have secured meaningful roles in the new single force but rather those lucky individuals who apparently are occupying sinecure roles until their contract either expires or their employment is otherwise terminated."*
5. Further correspondence followed between Mr Roulston and the SPA, but he did not receive a response to his requirement for review and, on 3 December 2013, applied to the Commissioner for a decision in respect of the SPA's failure to respond. This led to *Decision 294/2013*<sup>1</sup>, in which the Commissioner required the SPA to respond. The SPA upheld its decision that it did not hold the information, which could be obtained from Police Scotland: this conclusion appeared to apply now to the whole request.
6. On 5 February 2014, following further correspondence with the SPA, Mr Roulston wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of the SPA's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Roulston made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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8. The investigating officer subsequently contacted the SPA, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the SPA was asked to explain the steps taken to establish that it did not hold information falling within the scope of Mr Roulston's request.
9. During the investigation, submissions were received from both the SPA and Mr Roulston.

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201302858.aspx>



## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Roulston and the SPA. She is satisfied that no matter of relevance has been overlooked.
11. Mr Roulston sought a decision from the Commissioner in respect of all four parts of the request. The SPA confirmed its position that it did not hold any of the requested information.
12. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
13. The SPA explained that, as a result of Mr Roulston's application to the Commissioner, it had again contacted its Human Resources (HR) staff and asked if they now held the information requested. They stated that they did not. Therefore, the SPA's original position remained that it did not hold the information requested.
14. The SPA commented that Mr Roulston had made his request to the SPA on 18 March 2013. At that point, the SPA explained, it only had a Chair and Board members: permanent staff did not transfer from the Scottish Police Services Authority to the SPA until 1 April 2013. However, as the SPA was a legal entity, it was required to manage information requests and so processed Mr Roulston's request.
15. The SPA explained that Police Scotland did not become a legal entity until 1 April 2013. The posts Mr Roulston was requesting information about were, at the time of his request, still legacy posts in the previous police forces. As the SPA was not a successor to these forces, it did not inherit any information in a permanent form in respect of those posts.
16. The SPA explained that it had taken the view that if it did hold any relevant information, such as minutes of meetings where the matter may have been discussed, that information would be held by either its HR function or the staff supporting the newly formed Board. Therefore, the request was sent to both departments and both confirmed that they did not hold the information. The SPA noted that, at this time, the Board had only been responsible for Police Scotland for five days, so very little documentation existed. The search for the information was done manually on the computer drive created for the new organisation.
17. The SPA went on to explain that areas such as police payroll and HR were business areas controlled and staffed by Police Scotland, not the SPA. Therefore, in terms of its obligation to assist Mr Roulston (section 15 of FOISA), it had contacted Police Scotland and asked if they held the data requested. Police Scotland confirmed that they would hold this data, so Mr Roulston was provided with contact details.



18. Mr Roulston expected that there would have been some preparation for the SPA becoming fully operational on 1 April 2013. He referred to information in the public domain, dating from some months previously, that made reference to the creation of the SPA<sup>2</sup>.
19. Mr Roulston also referred to information on individual senior officers published (and therefore held) by the previous police boards.
20. The Commissioner has considered all of the above carefully. In all cases, she would expect a Scottish public authority to take reasonable, proportionate steps to identify and locate any information it holds and which falls within the scope of an information request.
21. In this case, bearing in mind the stage of the SPA's development at the time the request was received, the Commissioner accepts that the SPA's actions to assess whether it held the information requested were reasonable and proportionate in the circumstances. The Commissioner has noted Mr Roulston's comments in this connection, but cannot accept that it follows from these that the SPA should have been expected to hold the particular information requested by Mr Roulston, at the particular time he sought it.
22. The Commissioner notes that the SPA undertook a search for the information, encompassing the single computer drive created for the new organisation. Similarly, the SPA consulted the staff most likely to be aware of the information held. Given the size of the SPA at the time, the Commissioner considers these measures to have been adequate and to have been likely to locate any relevant information held without difficulty.
23. Finally, the Commissioner notes that the SPA advised Mr Roulston of the public authority that would hold the information requested (i.e. Police Scotland). Mr Roulston has made a similar request to Police Scotland, and the responses he has received appear to indicate that the information is held by that authority. Whether that other authority is entitled to withhold the information, or for that matter whether the SPA would have been entitled to do so if it held the information, is not a matter the Commissioner is required to consider here.
24. Having considered all relevant submissions and the terms of the request, the Commissioner accepts, on the balance of probabilities, that it was reasonable in all the circumstances for the SPA to conclude that it did not hold any of the information sought by Mr Roulston. She is therefore satisfied that the SPA was correct to give Mr Roulston notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his requests.

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<sup>2</sup> <http://www.scotland.gov.uk/News/Releases/2012/10/SPA24102012>



## **DECISION**

The Commissioner finds that the Scottish Police Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Roulston.

## **Appeal**

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Should either Mr Roulston or the Scottish Police Authority 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**  
**6 May 2014**



## 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.

...

- (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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