

# Decision Notice

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## **Decision 154/2015: Mr Paul Delamore and the Chief Constable of the Police Service of Scotland**

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### **The investigation into Willie Macrae's death: vehicle report**

Reference No: 201500190

Decision Date: 7 October 2015



Scottish Information  
Commissioner

## Summary

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On 14 July 2014, Mr Paul Delamore asked the Chief Constable of the Police Service of Scotland (Police Scotland) for information about the events surrounding the death of Mr Willie Macrae. This decision requires Police Scotland to provide Mr Delamore with a copy of the first page of a vehicle report which fell within the scope of Mr Delamore's request and which had previously been disclosed under the Freedom of Information (Scotland) Act 2002 (FOISA), but which Police Scotland did not disclose to Mr Delamore.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 34(1)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations)

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

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1. On 19 June 2015, the Commissioner issued *Decision 084/2015 Mr Paul Delamore and the Chief Constable of the Police Service of Scotland*<sup>1</sup> which focused on the information requests made by Mr Delamore on 14 July 2014, but did not address Mr Delamore's complaint that Police Scotland had failed to provide him with information (the first page of a vehicle report) which was previously disclosed under FOISA. This Decision Notice will focus solely on this point. The details of Mr Delamore's correspondence with Police Scotland are recorded in *Decision 084/2015* and are not repeated in full in this decision.
2. On 14 July 2014, Mr Delamore made a request for information to Police Scotland.
3. On 14 August 2014, Police Scotland responded to his request. They refused to disclose information about the car under section 34(1)(b) of FOISA.
4. On 25 August 2014, Mr Delamore requested a review of the response from Police Scotland.
5. On 22 September 2014, Police Scotland issued a review of their response to Mr Delamore's request. They continued to withhold the information under section 34(1)(b).
6. On 28 January 2015, Mr Delamore wrote to the Commissioner's Office, stating that he was dissatisfied with the way Police Scotland had responded to his request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. One of his grounds of dissatisfaction was that Police Scotland had failed to provide him with the first page of the vehicle report, despite the fact that one of their predecessor organisations (Northern Constabulary) had previously disclosed it under FOISA.

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201500190.aspx>

## Investigation

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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 10 March 2015, Police Scotland were notified in writing that an application had been received from Mr Delamore and were invited to comment on the application. Police Scotland were specifically asked to comment on Mr Delamore's assertions that they were withholding information that had previously been disclosed under FOISA.
9. Police Scotland responded to this letter on 27 March 2015, and indicated that all of the information previously disclosed by Northern Constabulary was currently in the public domain.
10. On 22 June 2015, Police Scotland were asked further questions about the information previously disclosed by Northern Constabulary, but they provided no response.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and 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.
12. In his application to the Commissioner, Mr Delamore said that, in 2005, Northern Constabulary disclosed information (26 documents and 13 photos) relating to the investigation into the death of Mr Willie Macrae and that this information was published on Northern Constabulary's website. Mr Delamore submitted that while the original Northern Constabulary website was removed when Police Scotland was formed, an archive of the old website is still available online, albeit difficult to find.
13. Mr Delamore noted that when the Northern Constabulary website was taken down in 2013, an individual made a request to Police Scotland asking them to provide all of the previously disclosed documents on the *whatdotheyknow* website<sup>2</sup>. Mr Delamore told the Commissioner that when Police Scotland disclosed all the documents on this site, they omitted the first page of the vehicle report. Mr Delamore argued that this information fell within the scope of his information request. He expressed concerns about Police Scotland's lack of transparency.
14. When questioned about the previous disclosure of this information, Police Scotland indicated that the information they disclosed to the *whatdotheyknow* website was the same information that had previously been published on Northern Constabulary's website. When questioned further about the discrepancies, Police Scotland did not respond.
15. The Commissioner has examined the two websites provided by Mr Delamore (the archive of the Northern Constabulary website<sup>3</sup> and the relevant page on the *whatdotheyknow* website<sup>4</sup>) and she notes that while the first page of the vehicle report is contained on the archived

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<sup>2</sup> [www.whatdotheyknow.com](http://www.whatdotheyknow.com)

<sup>3</sup> <https://web.archive.org/web/20120415074535/http://www.northern.police.uk/Default.aspx.LoCID-0axnew00o.RefLoCID-0ax00b00d004.Lang-EN.htm>

<sup>4</sup> [https://www.whatdotheyknow.com/request/willie\\_macrae\\_death](https://www.whatdotheyknow.com/request/willie_macrae_death)

website, it was not disclosed in response to the request made via the *whatdotheyknow* website.

16. The Commissioner is satisfied that Police Scotland hold this information, as the document was provided to her during the investigation that led to the publication of *Decision 084/2015*. It is clear that Police Scotland consider the document to fall within the scope of Mr Delamore's decision, or they would not have provided it to her during the investigation. Police Scotland applied the exemption in section 34(1)(b) of FOISA to the document. However, Police Scotland failed to provide the Commissioner with any submissions as to why information which was disclosed under FOISA in response to an earlier information request should now be considered to be exempt from disclosure. The Commissioner therefore finds that the exemption does not apply.
17. Although the information in question is currently available online, the Commissioner notes that it is difficult to locate and that Police Scotland took no steps to direct Mr Delamore towards the online archive when he made his information request. In the circumstances, the Commissioner requires Police Scotland to provide Mr Delamore with a copy of the first page of the vehicle report that was previously disclosed by Northern Constabulary in response to another information request.

## Decision

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The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to provide Mr Delamore with the first page of the vehicle report from Mr Delamore. In doing so, they failed to comply with section 1(1) of FOISA.

The Commissioner now requires Police Scotland to provide Mr Delamore with a copy of the first page of the vehicle report. She requires Police Scotland to do this by **21 November 2015**.

## Appeal

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Should either Mr Delamore 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

## **Enforcement**

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If the Chief Constable of the Police Service of Scotland fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Chief Constable of the Police Service of Scotland have failed to comply. The Court has the right to inquire into the matter and may deal with the Chief Constable of the Police Service of Scotland as if they had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**7 October 2015**

### 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.

...

#### 34 Investigations by Scottish public authorities and proceedings arising out of such investigations

- (1) Information is exempt information if it has at any time been held by a Scottish public authority for the purposes of –

...

- (b) an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted; or ...

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