

# Decision Notice



Decision 159/2008 Russell Findlay and the Scottish Police Services Authority

Photographic image of badge

Reference No:200801489

Decision Date: 18 December 2008

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr Findlay requested from the Scottish Police Services Authority (the SPSA) a photographic image of a particular badge used by officers to identify themselves to the public. The SPSA responded by indicating that this information was not held. Following a review, Mr Findlay remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPSA had dealt with Mr Findlay's request for information in accordance with Part 1 of FOISA by stating, in terms of section 17(1) of FOISA, that it did not hold the information requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17 (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 7 October 2008 Mr Findlay sent an email to the SPSA requesting a "publication quality" photographic image of a shield-style badge used by Scottish Crime and Drug Enforcement Agency (SCDEA) staff to identify themselves to members of the public.
2. The SPSA responded on 8 October 2008, advising that the SCDEA was not covered by FOISA and that the information requested was not held by the SPSA.
3. On 8 October 2008 Mr Findlay emailed the SPSA requesting a review of its decision. In particular, Mr Findlay explained that he knew the SCDEA was exempt from FOISA but also pointed out that the SPSA was not. He qualified his request by indicating the image did not need to be restricted to a "publication quality photographic image" as originally requested. Any recorded image of this shield-style badge held by the SPSA ought, in his view, to be released.



4. The SPSA notified Mr Findlay of the outcome of its review on 13 October 2008, re-iterating that it did not hold an image of any type of the shield-style badge, adding that the SCDEA did not hold any images of the badge.
5. On 14 October 2008 Mr Findlay wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPSA's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Findlay had made a request for information to a Scottish public authority and had 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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7. On 3 November 2008, the SPSA was notified in writing that an application had been received from Mr Findlay. The SPSA was also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the SPSA was asked what steps and specific searches it had undertaken in order to establish that no relevant information was held by it.
8. In addition to comments provided earlier in a letter dated 16 October 2008, SPSA responded on 14 November 2008 providing further comments and outlining steps taken to establish that no relevant information was held.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr Findlay and the SPSA and is satisfied that no matter of relevance has been overlooked.

### Whether the information requested by Mr Findlay is held by the SPSA

10. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
11. In its initial response of 8 October 2008, the SPSA indicated it did not hold the image described by Mr Findlay.
12. In order to determine whether the SPSA was correct to advise Mr Findlay that it did not hold the requested information, the Commissioner must establish whether, at the time it received Mr Findlay's request, the SPSA held information which would address his request.



13. In his application to the Commissioner, Mr Findlay indicated he did not believe the SPSA did not hold a copy of the requested information. He also submitted that it was in the public interest for the public to be allowed to see identification used by police officers.
14. The SPSA presented the Commissioner with a number of arguments as to why, as a matter of fact, it did not hold the information requested. While noting these arguments, the Commissioner has also considered whether, as a matter of law, the information in question could be deemed to be held by the SPSA for the purposes of FOISA.
15. The SPSA is established under the Police, Public Order and Criminal Justice (Scotland) Act 2006, with a duty to provide a range of “police support services”, listed in section 3(2) of that Act. It has a separate duty, under section 2 of the 2006 Act, to establish and maintain the SCDEA, which itself has a number of specified functions (primarily the prevention and detection of serious organised crime) which are separate and distinct from the police support services defined in section 3(2). By virtue of Part 1 of Schedule 6 of the 2006 Act, FOISA applies to the SPSA only in respect of information relating to the provision of the police support services. There is no separate provision applying FOISA to the SCDEA.
16. The badge requested by Mr Findlay is worn by SCDEA staff, where appropriate, when performing their duties as officers of the SCDEA. It therefore appears clear to the Commissioner that if an image of it were to be in the possession of the SPSA it would not relate to the provision of any of the police support services listed in section 3(2) of the 2006 Act. Consequently, that image could not be held for the purposes of FOISA and any consideration of whether such an image was in fact in the possession of the SPSA is unnecessary. Even if it had been, the Commissioner would have no locus to consider its status.
17. As the Commissioner is satisfied that the image requested by Mr Findlay could not be held by the SPSA for the purposes of FOISA (as a matter of law), he is not required to consider further the SPSA’s arguments as to whether it was in fact in its possession. He notes the steps taken by the SPSA to provide Mr Findlay with relevant information, including the supply of a copy of the SCDEA logo on which the badge is based, and is satisfied in the circumstances that (while it may also have been helpful to explain the legal position more fully) the SPSA took other reasonable steps to meet its duty to advise and assist Mr Findlay under section 15 of FOISA.

## DECISION

The Commissioner finds that the Scottish Police Services Authority (SPSA) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Findlay. In particular, the Commissioner is satisfied that the SPSA cannot, as a matter of law, hold the information requested by Mr Findlay and that it was therefore justified in giving him a notice in terms of section 17(1) of FOISA in response to his request.



## Appeal

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Should either Mr Findlay or the SPSA wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Investigations**  
**18 December 2008**



## 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.

##### 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.

- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.