

Decision Notice 194/2021

Vandalism reports for specified streets in Edinburgh

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202100762



Scottish Information
Commissioner

Summary

Police Scotland were asked for graffiti/vandalism reports for specified streets in Edinburgh, but no information was identified for the locations specified. The Commissioner investigated and was satisfied that Police Scotland did not hold the information (although adequate searches should have been carried out earlier).

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 1 June 2021, the Applicant made a request for information about graffiti and vandalism in specified locations (referring to YouTube videos, links to which were included in the request) to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested can be summarised as follows:
 - a) when a specified shop reported criminal activity on its premises to Police Scotland;
 - b) when the local authority reported “this” as offensive language graffiti vandalism to Police Scotland;
 - c) if recording matters [as] resolved when they were not had been reported to Police Scotland as fraud by any member of Southside Newington in the past six months.
2. Following clarification of the locations in question (by reference to specific street names), Police Scotland responded on 14 June 2021. Police Scotland notified the Applicant, in terms of section 17(1) of FOISA, that they did not hold the information.
3. On the same day (14 June 2021), the Applicant wrote to Police Scotland, asking them to review their decision: she did not accept the response given.
4. Police Scotland notified the Applicant of the outcome of its review on 21 June 2021, upholding the original response to the effect the the information was not held.
5. On 22 June 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of Police Scotland’s review as, in her view, Police Scotland should hold the information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 28 June 2021, Police Scotland was notified in writing that the Applicant had made a valid application and the case was 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. Police Scotland was invited to comment on this application and to answer specific questions. These related to how they approached searching for the information requested, including how they came to the conclusion that they did not hold the information.

Commissioner's analysis and findings

9. 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 him by both the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Whether information was held

10. 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.
11. 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 the authority to give the applicant notice in writing to that effect.
12. Police Scotland confirmed that they had conducted no searches initially on the basis that the request was ambiguous. During the investigation, they searched their crime recording system but located no relevant information. They also gave the Applicant a more detailed explanation of what information they would hold on incidents of this kind and how it would be recorded.

The Commissioner's findings

13. The Commissioner has taken into account the arguments put to him by both Police Scotland and the Applicant, noting the additional checks undertaken by Police Scotland during this investigation (which failed to identify information capable of addressing the terms of this particular request). Given the terms of the request, the Commissioner is satisfied that these checks were relevant, reasonable and proportionate with a view to locating any relevant information, if held. They should, however, have been carried out earlier, by the time of Police Scotland's review at the latest.
14. The Commissioner is satisfied, on the balance of probabilities, that Police Scotland were entitled to notify the Applicant, under section 17(1) of FOISA, that they did not hold information capable of addressing her request. However, he is not satisfied that they complied fully with section 1(1) by taking adequate steps to reach that conclusion before an application was made to the Commissioner. If the request had been ambiguous, Police Scotland could have asked the Applicant to clarify her request under section 1(3) of FOISA.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002

(FOISA) in responding to the information request made by the Applicant. In failing to take adequate steps to confirm that they held no information falling within the scope of the Applicant's request, Police Scotland failed to comply fully with section 1(1) of FOISA. However, the Commissioner is satisfied that adequate searches were undertaken during his investigation and that Police Scotland were entitled to notify the Applicant that they held no information capable of addressing her request. In the circumstances, the Commissioner does not require Police Scotland to take any action in respect of the above failure, in response to the Applicant's application.

Appeal

Should either the Applicant 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.

Margaret Keyse
Head of Enforcement

9 December 2021

Appendix 1: 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.

...

- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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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