

Decision Notice



Decision 201/2013 Mr Donnie Mackenzie and Chief Constable of the Police
Service of Scotland

Operations involving psychological/electronic warfare

Reference No: 201301551
Decision Date: 13 September 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 4 December 2012, Mr Mackenzie asked Northern Constabulary (the Police) for information relating to the use of psychological and electronic warfare. The Police responded by stating that it was not involved in any operations using these methods and so it did not hold the information he sought. This was accepted by the Commissioner following an investigation.

Relevant statutory provisions

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.

Note: Mr Mackenzie's request was made to the Chief Constable of Northern Constabulary. However, the decision has been issued in the name of the Chief Constable of the Police Service of Scotland (for convenience, also referred to as "the Police" in this decision) as the statutory successor to the Chief Constable of Northern Constabulary under the Police and Fire Reform (Scotland) Act 2012.

Background

1. On 4 December 2012, Mr Mackenzie wrote to the Police requesting information relating to the number of Northern Constabulary's operations (if any) involving the use of psychological/electronic warfare.
2. The Police responded on 3 January 2013, informing Mr Mackenzie that they were not involved in any operations which included the use of psychological or electronic warfare, with the result that they held no information falling within the scope of his request. Therefore, the Police gave Mr Mackenzie notice in terms of section 17(1) of FOISA.
3. On 11 February 2013, Mr Mackenzie wrote to the Police requesting a review of their decision. He provided reasons why he believed the Police were likely to hold the information.
4. The Police notified Mr Mackenzie of the outcome of their review on 7 June 2013, maintaining that they did not hold the information.



5. On 3 July 2013, Mr Mackenzie wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Police'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 Mackenzie 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

7. On 15 July 2013, the investigating officer contacted the Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Police were asked to justify their reliance on section 17(1) of FOISA.
8. The Police responded on 3 August 2013.

Commissioner's analysis and findings

9. 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 Mackenzie and the Police. She is satisfied that no matter of relevance has been overlooked.
10. Mr Mackenzie appealed to the Commissioner on the basis that he firmly believed there to be information held by the Police falling within the scope of his request. He believed that Northern Constabulary were involved in joint operations with the MOD which targeted people using the types of warfare mentioned.

Is the information held by the Police?

11. 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. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.
12. The Commissioner notes from Northern Constabulary's original response to Mr Mackenzie, upheld on review, that they informed him they were not involved in any operations which included the use of psychological or electronic warfare, so no information was held.



13. In relation to the searches and other enquiries carried out in reaching this conclusion, the Police informed the Commissioner that activities of such a nature would require authorisation from the relevant Head of Operations and that if any such activities had taken place they would have been recorded within that officer's department. They went on to state that all incidents within the former Northern Constabulary were recorded and, therefore, if any incidents of the kind referred to by Mr Mackenzie had occurred, they would have been recorded in line with operational procedures.
14. The Police confirmed that they had no record of this information being held.
15. Given the explanations detailed above, on the balance of probabilities, the Commissioner is satisfied that the Police held (and hold) no information falling within the scope of Mr Mackenzie's request and correctly gave Mr Mackenzie written notice of this when responding to his request, as required by section 17(1) of FOISA.

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 Mackenzie.

Appeal

Should either Mr Mackenzie 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
Head of Enforcement
13 September 2013



Appendix

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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