

Decision Notice

Decision 246/2014: Mr Michael Roulston and Her Majesty's Inspectors of Constabulary

Monitoring and reporting of senior police officers not holding a mandatory qualification

Reference No: 201402290

Decision Date: 24 November 2014



Summary

On 10 April 2014, Mr Roulston asked Her Majesty's Inspectors of Constabulary (HMICS) for details of any monitoring reported by HMICS to the Scottish Government in the last five years, in relation to the practice of officers holding temporary chief officer positions without having obtained a mandatory qualification.

HMICS notified Mr Roulston that they did not hold some of the information he had requested, but that relevant information was contained in their Annual Report (2008-09). Following a review, Mr Roulston remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that HMICS had partially failed to respond to Mr Roulston's request for information in accordance with Part 1 of FOISA. Although HMICS were correct to notify Mr Roulston that they did not hold some of the information he had requested, they did not provide sufficient advice and assistance to Mr Roulston to enable him to understand their response.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 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 10 April 2014, Mr Roulston made a request for information to HMICS. Mr Roulston referred to the HMICS Annual Report (2007-08) in relation to the Chief Inspector's comments about the mandatory selection requirements for senior police officers in Scotland. Mr Roulston quoted the following passage from the report:

"I note the extensive practice of non-SCC [Strategic Command Course] qualified officers holding temporary chief officer positions on an extended basis within a number of forces. I have expressed concerns about the cumulative impact of long-term temporary appointments on the operational effectiveness of Scottish policing, particularly in relation to handling critical incidents. At the end of 2007-08 almost a third of chief officer posts in Scotland are occupied by individuals who, whatever their merits, have not undergone formal, consistent training in strategic command. While we understand that such appointments are being made in the hope and expectation that temporary post-holders will be successful at S-PNAC [Senior Police National Assessment Centre – the SCC assessment centre] in the autumn of 2008, we will continue to monitor the situation."

2. Mr Roulston requested:

"...details of any such "monitoring" that was reported by HMICS to the Scottish Government...in the intervening 5 year period to include formal/interim reports, briefing notes, emails, presentations, analysis of personnel records confirming both successful and unsuccessful attendance at said courses, financial projections of the costs of temporary

promotions during that period together with associated projections of increased pension liabilities accruing from said temporary promotions, minutes from meetings where the matter was discussed, etc.”

3. HMICS responded on 12 May 2014. They notified Mr Roulston that they did not hold some of the information he had requested. They stated that their Annual Report (2008-09) commented on the subject of “monitoring” and referred him to the specific paragraph.
4. On 12 May 2014, Mr Roulston wrote to HMICS requesting a review of their decision on the basis that the response they gave him did not answer his request.
5. HMICS notified Mr Roulston of the outcome of their review on 18 August 2014. They upheld their original decision and referred Mr Roulston to an additional paragraph contained in their Annual Report (2008-09) as further evidence that information in the report was relevant to his request.
6. On 23 September 2014, Mr Roulston wrote to the Commissioner. Mr Roulston applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Roulston stated he was dissatisfied with the outcome of HMICS’s review because they failed to answer his request.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Roulston made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
8. On 17 October 2014, HMICS were notified in writing that Mr Roulston had made a valid application.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. HMICS were invited to comment on this application and answer specific questions including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

Commissioner’s analysis and findings

10. 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 Roulston and HMICS. She is satisfied that no matter of relevance has been overlooked.

Whether HMICS held any information covered by the request

11. The Commissioner understands that Mr Roulston is unclear as to what information HMICS do or do not hold in relation to his request.
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 held by the authority at the time the request is received, subject to qualifications 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 an applicant notice in writing to that effect.

HMICS submissions

13. In response to Mr Roulston’s request and request for review, HMICS advised him that they did not hold some of the information he requested but provided him with a copy of their

Annual Report (2008-09), referring him to a paragraph which, they said, commented on "the subject." "The subject" is understood to be the monitoring of the extended use of temporary non-qualified officers in senior posts, in the expectation that they would pass S-PNAC.

14. In their submissions to the Commissioner, HMICS clarified, with reference to the specific terms of Mr Roulston's request, that they did not hold any briefing notes, emails, presentations, financial projections of the costs of temporary promotions during that period together with associated projections of increased pension liabilities accruing from said temporary promotions, analysis of personnel records confirming both successful and unsuccessful attendance at said courses or minutes from meetings where the matter was discussed.
15. HMICS also stated that the only formal or interim report they made to the Scottish Government which commented on the subject of Mr Roulston's request was their Annual Report (2008-09) to which Mr Roulston had already been referred.
16. HMICS submitted that the "monitoring" referred to in the Annual Report (2007-08) was likely to have been conducted on an informal basis, and therefore no records would have been made, let alone reported to the Scottish Government.
17. HMICS submitted that all staff who might have been involved in such monitoring or reporting to the Scottish Government in the period following on from the Annual Report (2007-08) have left the organisation and all their personal files and email accounts have been deleted. HMICS were therefore not able to search these accounts.
18. HMICS also submitted that any letters or reports sent to the Scottish Government should be saved into their electronic Records Document Manager (eRDM), but searches of this system had not located any relevant information. HMICS provided the Commissioner with a list of the keywords they had used to interrogate the eRDM system. Searches were also carried out on the HMICS website, but, again, no information was found other than that located in the Annual Report (2008-09), which had already been disclosed to Mr Roulston.
19. HMICS explained that, while the issue raised in their Annual Report (2007-08) was that there were not enough sufficiently qualified staff to fill posts permanently, by the time they published their Annual Report (2008-09) the situation was very different. Informal monitoring had been carried out and this had revealed an increase in qualified staff in Scotland as well as more qualified staff from Northern Ireland and England applying for posts in Scotland. In the circumstances, HMICS submitted it was likely that no further monitoring (beyond 2008-09) was required. They confirmed that they do not hold any information regarding monitoring after this time period.

Mr Roulston's submissions

20. In his application to the Commissioner, Mr Roulston argued that since the HMICS Annual Report (2007-08) indicated that they would "continue to monitor the situation" (with regard to unqualified staff holding senior posts on a long-standing temporary basis), he would have expected such monitoring to be commented on in at least one of the annual reports that followed (e.g. 2008-09 or 2009-10) and perhaps in other standalone documents or emails.
21. Mr Roulston argued that the review outcome provided by HMICS had failed to answer his request about monitoring in the period since HMICS issued their Annual Report (2007-08). Mr Roulston argued that HMICS should confirm whether they held information or not, rather than making references to two particular annual reporting periods, and (as he saw it) implying that these references applied to all reporting periods.

Commissioner's view

22. The Commissioner notes that Mr Roulston considers that HMICS have not properly answered his information request; that he is unclear as to what information is or is not held by HMICS; and that he does not accept that information to which he was directed in the HMICS Annual Report (2008-09) meets the terms of his request.
23. The Commissioner notes that Mr Roulston has certain expectations of what the "monitoring" referred to in the HMICS Annual Report (2007-08) might consist of, and what kind of documentary evidence such "monitoring" would generate.
24. Although the information provided to Mr Roulston from HMICS's Annual Report (2008-09) was not what Mr Roulston might have expected to receive, HMICS consider it to be information covered by the terms of Mr Roulston's request, in reflecting how the situation had changed since the comments made in the previous year's report. HMICS have indicated that the "monitoring" referred to in its 2007-08 report was conducted informally and that there was no expectation that the monitoring would extend beyond the point where the situation being monitored had improved. HMICS have suggested that by reporting on the number of officers who qualified for a particular course in its Annual Report (2008-09), they were demonstrating that "monitoring" (of unqualified senior officers) had taken place and was being reported to the Scottish Government via their annual report.
25. In their review outcome to Mr Roulston, HMICS noted that their Annual Report (2008-09) also referred to the number of qualified candidates from England and Northern Ireland who had applied for senior posts. HMICS argued that the information contained in their Annual Report (2008-09) indicates that the situation (of non-qualified staff holding temporary Chief Officer posts on a long running basis) had been "monitored" and was now being reported on.
26. The Commissioner has considered the submissions from both parties and she is satisfied that HMICS's understanding of the term "monitoring", as used in its Annual Report (2007-08), is reasonable, and that the information in the Annual Report (2008-09) to which Mr Roulston was referred did provide some information that was relevant to his request. The Commissioner notes that the Annual Report (2008-09) does not provide specific details of monitoring that may have taken place (such as email correspondence, letters, telephone notes or other primary documentation), but she considers that the comments provided in that report are relevant to Mr Roulston's request and that HMICS were correct to direct him towards them.
27. The Commissioner accepts that any "monitoring" carried out by HMICS was informal and did not last much beyond a year. The Commissioner is also satisfied that no reports relating to such monitoring were submitted to the Scottish Government, other than what is contained in HMICS's Annual Report (2008-09).
28. The Commissioner has reviewed the searches conducted by HMICS on their data systems, along with the keywords used to carry out such searches and she is satisfied that HMICS have conducted appropriate searches and that no information of relevance has been located, other than that already provided to Mr Roulston. Having considered the explanations submitted by HMICS, along with their account of the searches they have conducted, the Commissioner is satisfied that HMICS provided Mr Roulston with all the recorded information they held which fell within the scope of his request. The Commissioner is satisfied that

HMICS were correct to give Mr Roulston notice that they did not hold some of the information he had requested.

Section 15 – Duty to advise and assist

29. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
30. The Commissioner notes that when HMICS told Mr Roulston that they did not hold “some” of the information he had requested, they did not identify what information they were referring to. Given that Mr Roulston had specified a number of different information types in his request (emails, minutes, presentations, financial calculations etc.) the Commissioner does not consider the use of the phrase “some information” to be particularly helpful.
31. The Commissioner also notes that, in their submissions to her, HMICS clearly identified what information they did not hold. They also explained the informal nature of the “monitoring” whose outcome was reflected in the HMICS Annual Report (2008-09) and explained that any staff that might have been involved in such “monitoring” had since left the organisation and their personal files and email accounts had been deleted.
32. In the Commissioner’s view, if HMICS had provided Mr Roulston with similar explanations in response to his initial request, particularly in relation to the nature of the monitoring that took place, he would have had a better understanding of what information HMICS held, and why they did not hold some information. If such an explanation had been made to him, he may not have required a decision from the Commissioner on this matter.
33. The Commissioner finds that HMICS failed to provide Mr Roulston with sufficient advice and assistance, and therefore failed to comply with section 15(1) of FOISA. Given the explanation provided in this decision, she does not require HMICS to take any action with respect to this failure.

Decision

The Commissioner finds that Her Majesty’s Inspectors of Constabulary (HMICS) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Roulston.

The Commissioner finds that HMICS provided Mr Roulston with information covered by his request, as required by section 1(1) of FOISA, and correctly gave notice that they did not hold some of the information he had asked for, as required by section 17(1) of FOISA.

However, HMICS failed to comply with section 15(1) of FOISA, in failing to provide Mr Roulston with reasonable advice and assistance.

The Commissioner does not require HMICS to take any action in respect of this failure.

Appeal

Should either Mr Roulston or Her Majesty's Inspectors of Constabulary 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

24 November 2014

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.

..

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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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