

Decision Notice



Decision 209/2013 Mr N and the Chief Constable of the Police Service of Scotland

Correspondence about a play park

Reference No: 201300930
Decision Date: 16 September 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 13 February 2013, Mr N asked the Chief Constable of the Police Service of Scotland (the Police) for correspondence regarding a child's play area. The Police stated that they did not hold the requested information.

The Commissioner accepted this, but found that the Police had failed to provide reasonable advice and assistance to Mr N in line with section 15 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15 (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 the Appendix to this decision. The Appendix forms part of this decision.

Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code)

Note: Mr N's request was made to the Chief Constable of Strathclyde Police. However, the decision has been issued in the name of the Chief Constable of the Police Service of Scotland as the statutory successor to the Chief Constable of Strathclyde Police under the Police and Fire Reform (Scotland) Act 2012. For ease of reference, both chief constables are referred to in this decision as "the Police".

Background

1. On 13 February 2013, Mr N asked the Police for correspondence sent to a named Housing Association from a named police station over the last twelve months, concerning a child's play area outside a specified address.
2. On 13 March 2013, the Police wrote to Mr N and requested that he clarify what information he was seeking. Mr N responded the same day and reiterated his request, stating that his request had been specific.



3. The Police responded to Mr N's request on 27 March 2013, citing section 18(1) of FOISA and refusing to confirm or deny whether they held the information requested by Mr N. They indicated that, were any of the information to be held, it would be considered exempt under section 34 of FOISA (Investigations by Scottish public authorities).
4. On 27 March 2013, Mr N emailed the Police requesting a review of their decision.
5. The Police notified Mr N of the outcome of their review on 11 April 2013. The Police decided to substitute a different decision, and informed Mr N, in line with section 17(1) of FOISA, that they did not hold the information he had asked for.
6. On 14 April 2013, Mr N emailed 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.
7. The application was validated by establishing that Mr N 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

8. The investigating officer contacted the Police on 9 May 2013, 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. The Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested by Mr N. The Police were also asked to explain the searches that they had undertaken to identify the information covered by Mr N's request.
9. The Police responded on 3 June 2013, explaining the searches that had been undertaken and why they believed they did not hold any information covered by the request, as they understood it.
10. Further submissions and clarification were received from both the Police and Mr N during the investigation.

Commissioner's analysis and findings

11. 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 N and the Police. She is satisfied that no matter of relevance has been overlooked.



12. 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.
13. In their initial submissions, the Police explained where the information requested by Mr N could have been recorded and the process for recording that information. The Police also confirmed that two named police officers had been in contact with Mr N and confirmed that they held no information falling within the scope of his request.
14. The Police also explained that there could have been any number of reasons why they could have written to the Housing Association regarding the play park, including complaints regarding unsafe equipment, antisocial behaviour, police initiatives regarding play parks and warnings regarding child safety issues. The Police stated that to search their systems for this information would be time consuming.
15. The Police were asked whether, in view of this comment, it was possible that they might in fact hold information covered by Mr N's request. The Police commented that, in order to establish this, the records of the 1,400 staff at the named police station would have to be searched, which would incur costs in excess of £600, the limit set by the relevant Fees Regulations¹.
16. The investigating officer requested, and the Police provided, a breakdown of the estimated costs of searching for the requested information. The Police stated that to search the records of their 1,400 staff would cost £1,050.
17. The investigating officer informed Mr N that the Police took this view. Mr N stated that only a handful of officers could have written to the Housing Association, and the Police knew who they were.
18. The investigating officer asked the Police to conduct targeted searches focusing on the individual officers known to have had dealings about the play park, to ascertain whether they held any relevant information. The Police then searched the records of three officers, but did not retrieve any information falling within the scope of Mr N's request.
19. The Commissioner notes that Mr N did not provide any details of the type of correspondence he was interested in (for example, correspondence about anti-social behaviour or police initiatives regarding play parks) when making his request or when making his application to her for a decision. The Police asked Mr N to clarify his request but he felt it was sufficiently specific.

¹ The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulations 3 (Projected costs) and 5 (Excessive cost prescribed amount)



20. The Commissioner has taken into account the broad and non-specific nature of Mr N's request and accepts that, potentially, it might have required an exhaustive search of every officer's records at the named police station to be sure that all information covered by the terms of Mr N's request had been identified. However, she accepts that the Police have searched the records of those officers most likely to hold relevant information (that is, those officers known to have been in contact with Mr N and the Housing Association). The Commissioner is satisfied that, by the end of her investigation, the Police had taken adequate, proportionate steps to establish whether they held any information falling within the scope of the request.
21. On the basis of the evidence provided, following investigation, the Commissioner is satisfied that the Police held no information falling within the scope of Mr N's request, and that they correctly gave him notice of this, in line with section 17(1) of FOISA.

Section 15 Duty to provide advice and assistance

22. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
23. In their review response, the Police unsuccessfully sought clarification from Mr N as to the type of information he was seeking.
24. The Commissioner notes that the Police sought clarification from Mr N on the twentieth working day of the response time period. The Commissioner would ask the Police to take account of paragraph 1.5 of the Scottish Ministers' Code of Practice, which states:

"Where a public authority has received a valid request, but needs more information from the applicant to identify and locate the information, the authority should ask the applicant to clarify what information is sought as soon as reasonably possible."
25. During the investigation, the Police provided the investigating officer with examples of some types of information they held which could potentially fall within the scope of Mr N's request.
26. The Commissioner notes that the Police provided these details and examples with ease. The Commissioner considers that when the Police realised that Mr N's request could potentially cover a range of different information, they should have explained this to him, rather than simply asking him to clarify his request without providing any context. Providing this explanation would have helped him to focus his request on the topics of interest to him.
27. The Commissioner is also aware that the Police had previously been in contact with Mr N and so had a better understanding of the information he was seeking than is usually the case. Although FOISA is "applicant blind", this is an example of one occasion where the applicant's identity, and the history of their dealings with a public authority, would have been relevant to the Police in providing assistance to Mr N.



28. Consequently, the Commissioner has concluded that the Police failed to comply fully with the duty in section 15(1) of FOISA to provide reasonable advice and assistance to Mr N in making his request. To some extent, this has been remedied during the Commissioner's investigation, in that it has been possible to identify particular area on which searches should be focused, and therefore the Commissioner does not require the Police to take any further action in respect of this failure.

Commissioner's comments on proportionate versus exhaustive searches

29. During the investigation, the Police stated that to conduct a definitive and extensive search would incur excessive costs, as every employee's records would have to be searched in order to ensure that all information covered by the request was retrieved.
30. Given that Mr N was known to have dealt with a handful of officers on the subject of the children's play area, the Commissioner considers that a more pragmatic approach, in which searches were focused on the areas where relevant information was most likely to be found, was both possible and appropriate, in the circumstances of this case.

DECISION

The Commissioner finds that the Chief Constable of the Police Service of Scotland (the Police) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr N.

The Commissioner finds that the Police did not hold the requested information, and gave Mr N notice of this in line with section 17(1) of FOISA.

However, the Commissioner also finds that the Police failed to provide reasonable advice and assistance to Mr N in making his request, and therefore failed to comply with section 15(1) of FOISA. The Commissioner does not require the Police to take any action in relation to this breach.



Appeal

Should either Mr N 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
16 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.
- ...

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.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).



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.

...