

Decision Notice

Decision 110/2015: Mr Cameron Brooks and the Scottish Police Authority

Raw data from the Police Firearms Survey

Reference No: 201500836

Decision Date: 13 July 2015



Scottish Information
Commissioner

Summary

On 5 February 2015, Mr Brooks asked the Scottish Police Authority (SPA) for the full, raw data results that were used to compile the Police Firearms Survey carried out by the research group TNS. The SPA replied that it did not hold the information. Following a review, Mr Brooks remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the SPA does not hold the raw data. She is satisfied that the SPA responded to Mr Brooks' request in accordance with FOISA.

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 5 February 2015, Mr Brooks made a request for information to the SPA. The information requested was:

“... the full, raw data results that were used to compile the Police Firearms Survey carried out by research group TNS. The information I am seeking is the raw results from face-to-face in home interviews – information gathered by computer assisted personal interviewing software on a laptop. The survey document was released by SPA on January 29, 2015.”

Mr Brooks also made another request which is not the subject of this decision.
2. On 5 March 2015, the SPA gave notice, in terms of section 17 of FOISA, that it did not hold the information.
3. On 24 March 2015, Mr Brooks wrote to the SPA requesting a review of its decision. Mr Brooks asked how the SPA could produce results if it had no raw data to work with.
4. The SPA notified Mr Brooks of the outcome of its review on 9 April 2015, confirming its initial response. It explained that it had commissioned TNS Global (“TNS”) to conduct the survey. TNS had analysed the data and delivered the overview report to the SPA. The SPA confirmed that the raw data had not been supplied by TNS and commented that it would be unusual for this to happen.
5. On 6 May 2015, Mr Brooks wrote to the Commissioner. Mr Brooks applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Brooks stated he was dissatisfied with the outcome of the SPA's review because his request had been intended to establish the regional support for the policy (to which the survey related) and, in particular, how many people in the north and north-east of Scotland were asked for their opinion and what their views were. Mr Brooks believed there was a public interest in making such information available.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Brooks made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPA was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

8. 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 Brooks and the SPA. She is satisfied that no matter of relevance has been overlooked.

Section 17(1) - Notice that information is not held

9. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable here. 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.
10. Mr Brooks' request was clear and precise. The requested information is the raw data that was obtained by TNS in conducting the survey¹.
11. The SPA gave Mr Brooks notice in terms of section 17 that it did not hold the raw data requested.
12. The question for the Commissioner is whether the SPA complied with FOISA in responding in this way to Mr Brooks' request, or whether the SPA held any recorded information that fell within his request.
13. The SPA was asked to explain how it had satisfied itself that it held no raw data. The SPA was also asked whether TNS held the raw data on behalf of the SPA.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
15. The SPA submitted it held no data relevant to the request. It stated that it would not wish to hold the raw data "as to do so may undermine public confidence in future research where the public are assured that all responses are anonymous and are not physically available to SPA in their raw form".
16. The SPA explained that it had not needed to carry out any searches to establish whether it held the raw data, as it was aware that the only data it had obtained from TNS was the final output of the survey, which was published and made available to Mr Brooks.

¹ <http://www.spa.police.uk/assets/128635/tnssurveyreport>

17. The SPA explained that it had no interest in the raw data; it was the findings of the survey that were important to it. The SPA questioned why it would need or want the burden of protecting raw data which it was not qualified to interpret. The SPA commented:

“This outsourcing is standard practice in large organisations who wish to obtain an accurate picture of public perceptions and feel that this is best served by having the research conducted completely independently by a reputable company who complies with the Market Research Code of Conduct.”

18. The SPA explained that the release of raw data by TNS to the SPA would contravene the Market Research Code of Conduct; therefore it would be unprofessional and unethical for TNS to have shared the data with the SPA. The SPA submitted that, as TNS’s client, the SPA was entitled to receive a copy of the aggregated data tabulations if required. The SPA had informed TNS that the interpretative report which TNS delivered was the main desired output from the study. TNS made a clear distinction between the aggregated data tabulations and raw data, because the former ensures that there is no way that the confidentiality of the respondent can be breached, This would contravene paragraphs 26 and 27 of the Market Research Society Code of Conduct²:

26. Members must ensure that the anonymity of participants is preserved unless participants have given their informed consent for their details to be revealed or for attributable comments to be passed on.

27. Members must take reasonable steps ensure that anonymisation is effective, with reference to developments in technology and to the data environment into which data are released.

19. The SPA commented that another factor to be considered is how the survey data would be used by the client and, more significantly, by any third party with access to the data, whether in raw data format or as data tabulations. The SPA referred to paragraph 56 of the Code of Conduct:

56. Members must take reasonable steps to check and where necessary amend any client-prepared materials prior to publication to ensure that the published results will not be incorrectly or misleadingly reported.

20. The SPA considered this was another reason why such data would not be shared: the survey company would have less control of the data if they were to be disclosed to a third party.

21. Having considered all the relevant submissions, Commissioner accepts that the SPA has taken adequate and proportionate steps to establish whether it held information which fell within the scope of Mr Brooks’ request. In reaching this conclusion, the Commissioner has taken into account the following:

- the information falling within the request would be readily identifiable
- the SPA has provided evidence and reasonable argument why, in terms of the SPA’s functions, it would not hold such information
- the SPA has provided evidence and reasonable argument why, in terms the regulatory framework for such surveys, it would not hold such information

² <https://www.mrs.org.uk/pdf/mrs%20code%20of%20conduct%202014.pdf>

- the SPA has evidenced its position by supplying the Commissioner with copies of communications from TNS.

22. The Commissioner fully accepts the SPA's submissions that it does not hold the raw data. She finds that the SPA complied fully with Part 1 of FOISA in responding to Mr Brooks' request, by giving notice that it did not hold the information, as required by section 17 of FOISA.

Decision

The Commissioner finds that the Scottish Police Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Brooks.

Appeal

Should either Mr Brooks or the SPA 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 July 2015

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.

...

(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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