

Decision Notice

Decision 118/2015: Mr Robert Robb and the Chief Constable of Police Scotland

Bail checks

Reference No: 201500735

Decision Date: 27 July 2015



Scottish Information
Commissioner

Summary

On 9 March 2015, Mr Robb asked the Chief Constable of Police Scotland (Police Scotland) for information about bail checks and time taken for these bail checks.

Police Scotland stated that they were not required to provide the information about bail checks as the cost of doing so would be excessive, and they did not hold the information about the time the checks had taken.

Following an investigation, the Commissioner upheld Police Scotland's response.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 17(1) Notice that information is not held)

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

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 9 March 2015, Mr Robb made a request for information to Police Scotland. The information requested was:
 - a. How many 'Bail Checks' were carried out between 1 January 2013 and 31 December 2013 by Police Scotland on persons who were either untried, or convicted, following an appearance in a Scottish Sheriff Court, on charges deemed by Police Scotland to be related to 'Domestic Abuse', where the Sheriff dealing with the case did not provide the 'lawful authority' for the visit to be carried out as part of the person's specific 'Bail Conditions'?
 - b. How much Police time and/or resources were spent between 1 January 2013 and 31 December 2013 by Police Scotland carrying out the type of 'Bail Checks' detailed in the request above?
2. Police Scotland responded on 11 March 2015. In relation to part (a) of the request, Police Scotland informed Mr Robb that it would cost in excess of £600 to provide a response, which was more than the limit in the relevant Fees Regulations. In terms of section 12(1) of FOISA, they refused to provide the information. In relation to part (b), Police Scotland gave notice in terms of section 17(1) of FOISA that they did not hold the information.
3. On 20 March 2015, Mr Robb emailed Police Scotland requesting a review of their decision. He found it incomprehensible that the information requested in part (a) was not held in a searchable database. In relation to part (b) of his request, he noted that he was only seeking the time spent by officers and suggested ways that this time could be calculated.

4. Police Scotland notified Mr Robb of the outcome of their review on 20 April 2015. Police Scotland provided further explanation of their initial response, which they upheld without modification.
5. On 23 April 2015, Mr Robb emailed the Commissioner. Mr Robb applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Robb stated he was dissatisfied with the outcome of Police Scotland's review and he reiterated the comments he made in his request for review.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Robb 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. The case was then allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 1 June 2015, the investigating officer notified Police Scotland in writing that Mr Robb had made a valid application. Police Scotland were invited to comment on this application and to answer specific questions. These questions focused on the costs associated with responding to part (a) of the request and whether information was held for part (b) of the request. They responded on 22 June 2015.
8. On 14 July 2015, Police Scotland were asked whether their database would hold the specific information requested by Mr Robb (i.e. whether it would identify the cases where the Sheriff did not provide the lawful authority for the visit to be carried out as part of the person's bail conditions). Police Scotland provided further information on this point.

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 Robb and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) - Excessive cost of compliance (part a. of request)

10. Under section 12 of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). Consequently, the Commissioner has no power to order a public authority to disclose information should she find that the cost of responding to a request for that information exceeds this sum.
11. The projected costs the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in:
 - (i) locating
 - (ii) retrieving, and
 - (iii) providing

the information requested in accordance with Part 1 of FOISA. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

12. Police Scotland explained that they do not have a single national system or inventory which separately lists domestic bail check information for the 2013 period and each legacy force (the predecessors of Police Scotland) would have to search their own records for the requested information.
13. As an example of the costs it would incur, Police Scotland provided details of the searches that would have to be conducted in the former Lothian and Borders Police region for the requested information. In conducting this search, Police Scotland explained that all incidents are allocated a 'type', which has its own unique code. A search under the code type 'Bail/Curfew/Address Check' for the time period 1 January 2013 to 31 December 2013 identified 1,163 records.
14. Police Scotland explained that the 'Bail/Curfew/Address Check' code was used to record curfew and address checks, not just bail checks, or indeed domestic bail checks. Each incident record would therefore have to be examined in turn to trace those that relate specifically to domestic bail checks and, from these, which were conducted without 'lawful authority' as this level of detail could not be immediately ascertained from the list of search results.
15. Police Scotland responded to a query as to whether the specific bail check information requested by Mr Robb would actually be recorded in its databases. Police Scotland explained that the specific bail check information would be noted within the incident system in free-text fields, which are not searchable. Therefore, each bail check incident would need to be read through to ascertain whether it contained the requested information.
16. Police Scotland noted during their review that other incident codes could be used to record bail check incidents, and so these records would also have to be searched. A search of the system for one of these other codes identified an additional 256 records.
17. In their submissions, Police Scotland estimated it would take five minutes to examine each record, which equated to 83 hours to search 1,000 records. They submitted that more time might be required if other systems had to be checked or individuals had to be asked about the case.
18. In relation to the hourly cost, Police Scotland based their cost estimate on the mid salary point of a Disclosure Officer which is currently £19,700, equating to an hourly rate of £10.23. It would therefore cost Police Scotland £850 in staff time to carry out the necessary searches just for information from the former Lothian and Borders region.
19. Police Scotland reiterated that the estimate it had provided was for only one region and the search would have to be replicated across Scotland; it is understood that other former legacy forces use different systems for recording bail checks.
20. Taking account of all the circumstances, the Commissioner is satisfied that Police Scotland have provided a reasonable estimate of the cost of complying with Mr Robb's request for information in relation to the former Lothian and Borders region. The Commissioner accepts that additional costs would be incurred by in searching for information in the separate systems used by the other legacy police forces. As the estimated cost for retrieving the information from the system operated by the former Lothian and Borders region is over £600, the Commissioner considers it is not necessary to consider what the estimated costs would

be in relation to Police Scotland as a whole. Given the nature of the work required, the Commissioner accepts that complying with the request would cost well over the £600 limit.

21. Consequently, the Commissioner is satisfied that Police Scotland were entitled to rely on section 12(1) of FOISA in relation to Mr Robb's information request, and therefore were under no obligation to comply with the request.

Section 15 of FOISA - Duty to provide advice and assistance

22. It is essential to any requester pursuing a right to information that (where the public authority is not simply providing the information, but rather is directing the requester to a place where it may be obtained) the requester knows enough about where to look for it to be able to pursue that right effectively. To this end, the authority's duty to provide advice and assistance can be vital.
23. Section 15 of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
24. Police Scotland were asked whether they could have provided additional advice and assistance to Mr Robb, to help him reduce the scope of his request. Police Scotland explained that the request was extremely complex and would require them to interrogate various systems and then to look in detail at the information in order to ascertain the number of such checks conducted in the specific circumstances outlined by the applicant. Therefore, Police Scotland could not suggest an alternative approach which would give Mr Robb meaningful data for the whole of Scotland.
25. Having considered the terms of Mr Robb's request, specifically its detailed nature, the Commissioner is satisfied that Police Scotland could not reasonably provide any specific advice or assistance to help Mr Robb reduce the scope of his request to bring under the £600 cost limit.

Section 17 - Notice that information is not held (part b. of request)

26. 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, subject to qualifications which are 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.
27. Police Scotland explained that officers conduct bail checks as part of their expected, regular duties. They provided a copy of the Bail Operational Toolkit procedure and details of a Police Officer's responsibilities.
28. Police Scotland explained that Police officers are not required to record time taken to complete a bail check, and do not create such records. They explained that a bail check can take any amount of time: for example, a basic check can take minutes, but if a person is found within in breach of their bail conditions or officers have a suspicion the person may be within and are required to search the property, then the check will take longer.
29. Having considered Police Scotland's submissions and having read the documents they provided, the Commissioner is satisfied that the time to complete a bail check is not recorded and Police Scotland do not hold this information.

30. In light of the above, the Commissioner finds that Police Scotland were correct to give Mr Robb notice, in terms of section 17(1) of FOISA, that they do not hold any information in connection with this part of the request.

Decision

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

Appeal

Should either Mr Robb 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

27 July 2015

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

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.

...

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info