



Decision Notice 031/2023

Threats of violence towards MPs, MSPs and local government councillors

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202200020

Summary

The Applicant asked the Authority for the number of reported threats of violence towards Members of Parliament, Members of the Scottish Parliament and local government councillors. The Authority stated that complying with the request would cost more than £600 so it was not obliged to comply. Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 47(1) and (2) (Application for decision by Commissioner)

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 15 October 2021, the Applicant made a request for information to the Authority. He asked for the number of threats of violence towards (1) Members of Parliament, (2) Members of the Scottish Parliament and (3) local government councillors, by members of the public, reported to the Authority, along with a yearly breakdown for each since 2016.

2. The Authority responded on 12 November 2021. It refused the request in terms of section 12(1) of FOISA as it considered the cost of complying would exceed the specified limit of £600. The Authority explained that it operated a number of crime recording systems which were not capable of retrieving the specific information requested. In particular, as the roles specified in the request were not mandatory fields on its recording systems, it was not possible to search recorded incidents based on specific details of the victim. As such, compliance with the request would involve individually examining every crime report for the time period stated. To be of assistance, the Authority provided a link to its website where it published crime statistics.
3. On 22 November 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because no clear methodology had been set out as to why the request would hit the cost exemption which, he believed, did not apply.
4. The Authority notified the Applicant of the outcome of its review on 20 December 2021, fully upholding its original decision for the reasons previously stated. To illustrate its position, it explained that 117,753 Group 1-5 crimes were reported in Quarter 2 of 2020/21 alone, each of which would require to be individually reviewed. At an estimated five minutes per report and staff costs of £15 per hour, this task would clearly exceed the FOI cost limit.
5. On 6 January 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he did not believe that the approach taken by the Authority was proportionate to the request. He did not wish, nor expect, it to examine every crime report at vast expense to the public purse, but there did not seem to be another way of gaining access to this information.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 27 January 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These focussed on the Authority's justification for refusing the request on the basis that it would cost in excess of £600 to comply.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 12(1) – Excessive cost of compliance

10. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant

amount prescribed in the Fees Regulations. This amount is currently £600 (see regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.

11. The projected costs a Scottish 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) it reasonably estimates it will incur in locating, retrieving and providing the information requested, in accordance with Part 1 of FOISA. The maximum hourly rate the authority can charge for staff time is £15 per hour. The authority may not charge for the cost of determining (i) whether it actually holds the information, or (ii) whether or not it should provide the information.

The Applicant's submissions

12. In his application to the Commissioner, the Applicant believed there was a central problem with how the Authority held its information and how that information was accessible to the public. He submitted that the vast majority of crime data, unless published pro-actively by the Authority, was held simply as "management information", and it was impossible for the public to access potentially important statistics.
13. The Applicant submitted that this allowed the Authority to control, within reason, what information it considered important to publish. He argued, however, that it excluded the public from accessing data that may be reputationally damaging, raise key public interest points, challenge existing policy and/or hold the Authority accountable.
14. The Applicant believed that his request showed that a relatively narrow request for crime data made it impossible for the public to access information, and this went against the spirit of FOISA. In his view, the Authority held the information in way that evaded the scope of FOISA, particularly with regard to the cost exemption in section 12(1).

The Authority's submissions

15. The Authority submitted that section 12(1) applied to the request as the cost of locating, retrieving and providing the information requested would exceed the £600 cost limit.
16. The Authority explained that, at the time of the Applicant's request, eight crime recording systems were in use, all of which were independent of each other, and this made retrieving statistics difficult. Furthermore, the "occupation" field was not mandatory and there was no central store of nominal data: depending on the system in use, different "rules" applied to the recording of occupations. For example, on one system, "occupation" was recorded as free-text and any searches would be based on an exact match and would not take account of any spelling errors or variations. On another system, where a person had changed their occupation, their historical records were updated to reflect their current employment: while the most recent information should be accurate for occupation, the Authority could not comment on the veracity of previous interactions.
17. With regard to its claim (in its review outcome) that it would be required to check every crime report, the Authority was asked to explain if it had considered only those crime types which were more relevant to threats of violence. In response, the Authority stated that, for one of its smaller divisions (North East of Scotland), the number of recorded crimes in 2021/22 for Breach of the Peace including Threats and Stalking was 3,150, plus a further 2,920 recorded crimes of Threatening and Abusive Behaviour. For a larger division (Greater Glasgow), the comparative figures were 9,889 and 8,888 respectively. The same data would need to be

retrieved across all 13 divisions and added together, and then each of these reports would need to be checked for occupation.

18. The Authority submitted that, while it had provided a description of the costs involved at review stage, it was unable to provide an estimated overall cost with any accuracy. It explained that, due to the disparate systems in use and the various searches required to retrieve the information, to carry out a sample costing exercise for one system would not provide an accurate reflection of the work involved for other systems. The Authority stressed that, as occupation was not a mandatory field, even if it did check each crime report for occupation, there was the chance that this information would not have been recorded in every case.
19. The Authority acknowledged it had not provided any assistance to the Applicant to reduce the scope of this request, given the volume of reports for one quarter of 2020/21 was considered excessive. In its view, the example provided above demonstrated that the number of reports held for one area, on a reduced number of crime types, would still be a significant number of reports which would require to be assessed. The Authority stated it could not see any way in which to reduce the scope of the request while still providing any kind of meaningful statistics.

The Commissioner's conclusions

20. The Commissioner has carefully considered the submissions from both parties, along with the terms of the request.
21. The Commissioner acknowledges that the Applicant clearly believes that the capabilities of the Authority's crime recording systems are inadequate to enable it to retrieve specific crime data which would allow it to respond positively to information requests. However, the Commissioner is required to consider whether section 12(1) of FOISA applies in this case, with regard to the recording systems in use by the Authority, and not with regard to what an Applicant might wish these systems to be capable of. Furthermore, as noted in [Decision 050/2021](#)¹ (which involved a different Authority), it is not within the Commissioner's remit to instruct a public authority to change its data recording systems.
22. Taking into account the different crime recording systems in use across the Authority, the fact that occupation is not recorded in a mandatory field (and, indeed, is recorded in different ways across each crime recording system) and the high number of crime reports likely to be involved, the Commissioner accepts that a manual review of the relevant crime records for the time period covered by the request would be required. He is therefore satisfied that the Authority has reasonably estimated that complying with the request would exceed the £600 cost limit.
23. In all of the circumstances, therefore, the Commissioner finds that the Authority was correct to refuse the request under section 12(1) as complying would exceed the cost limit.

Decision

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

¹ <https://www.itpublicknowledge.info/decision-0502021>

Appeal

Should either the Applicant or the Authority 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

30 March 2023

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

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.