



Scottish Information  
Commissioner  
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# Decision Notice 268/2024

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## Number of police officers arrested

Applicant: Alexandria Gallagher

Authority: Police Investigations and Review Commissioner

Case Ref: 202400780

### Summary

The Applicant asked for information on the number of police officers arrested by the Authority. The Authority told the Applicant that it would cost more than £600 to provide the information requested and therefore it was not obliged to provide a response. The Commissioner investigated and agreed with the Authority, but concluded that it had not fulfilled its duty to provide advice and assistance.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 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)

### Background

1. On 18 January, 2024, the Applicant asked the Authority for information regarding:
  - a) the number of police officers arrested by the Authority since its formation as an agency
  - b) the number of those police officers who were successfully prosecuted
  - c) whether they were prosecuted as police constables or police officers
  - d) the difference between a police officer and a police constable,

- e) the supporting legislation and policy documentation.
2. On 15 February 2024, the Authority responded to the Applicant's request by informing them, in line with section 12 of FOISA, that as it would cost in excess of £600 to fulfil part a). of their request it was not obliged to comply with this part of the request. The Authority also informed the Applicant that it did not hold any information which would fulfil parts b), c) and d) of their request and so were relying on section 17 of FOISA. In explaining to the Applicant that many of its powers originate from the Police Public Order and Criminal Justice (Scotland) Act 2006, the Authority provided the Applicant with a link to facilitate access to information on its website which would fulfil part e) of their request.
  3. On March 1, 2024, the Applicant requested a review, disputing the claim that providing information which would fulfil part a) of their request would exceed any cost limit and said they felt this data could be easily compiled and provided without unnecessary costs or delay.
  4. The Authority responded on 28 March 2024, upholding its original decision. The Authority also provided the Applicant with a breakdown of the searches that would be required to locate, retrieve and provide the requested information, along with the time it would be likely to take.
  5. On 5 June 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the Authority's review because they believed the assertion that providing the information would exceed the cost limit was incorrect. The Applicant believed the data could be broken down and supplied without incurring unnecessary costs or obstructing the request process.

## **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 13 June 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was then 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 answer specific questions. These sought justification from the Authority as to why it concluded that the cost to it of responding to part a) of the Applicant's request would exceed the cost threshold set out in the Fees Regulations. The Authority was also asked to provide a worked example to support and explain how it calculated the cost to it of complying with this part of the Applicant's request. Submissions were also requested from the Authority on whether it had complied with the duty under section 15 of FOISA.

## **Commissioner's analysis and findings**

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

## **Section 12(1) – Excessive cost of compliance**

10. The Commissioner must consider whether the Authority was correct to refuse to comply with part a) of the request in line with section 12(1) of FOISA, at the time the request was received (or, at the latest, the time of its review).
11. Under section 12(1) 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). The Commissioner has no power to order a Scottish public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.
12. Paragraph 7 of the [Commissioner's guidance on section 12\(1\) of FOISA states](#)<sup>1</sup>; "A public authority is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. However, an authority is not entitled to charge for any costs incurred in determining whether it actually holds the information. This means authorities cannot charge for searching for the information if it turns out they don't hold it."

### *The Applicant's submissions*

13. The Applicant did not believe that providing the information would exceed any cost limit. She said she believed that the data could be easily broken down and supplied without incurring unnecessary cost.

### *The Authority's submissions*

14. The Authority confirmed that it was relying on section 12(1) for refusing to fulfil part a) of the Applicant's request.
15. In its submissions the Authority explained that it does not record in its database how many Police Officers have been arrested by it since its formation. There are no specific fields within its database which would contain in this information, and the software used for investigations does not anticipate that this is information that needs to be recorded. Furthermore, this is not a metric that the Authority is required to report on.
16. The Authority commented that incidents referred to them for investigation are considered as "referrals". On receipt of such a referral, an entry is made in its database and a folder set up to contain all of the information sent, received and processed. Should a decision be made to investigate the matter fully then an appropriate entry is made on its systems.
17. The Authority outlined the nature of the information that may be gathered as part of an investigation and noted that reference to an officer being arrested by one of its investigators could appear in any of those pieces of information. As such, everything within the folder and files relating to each investigation would have to be considered to locate, retrieve and provide information falling within scope of part a) of the Applicant's request.
18. Its Annual Reports show that from April 1, 2013, to March 20, 2024, the Authority started 806 investigations. Since 2021, it has also been instructed to investigate all allegations of assault against on-duty police officers under Article 3 of the European Convention on Human Rights. By March 20, 2024, it had received 844 referrals for these investigations.

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<sup>1</sup> <https://www.foi.scot/sites/default/files/2022-03/FeesandExcessiveCostofComplianceBriefing.pdf>

19. Detailed calculations were provided by the Authority setting out the number of folders and files it would have to view (433,588 files within 40,545 folders). The Authority explained that a sample exercise was carried out to determine how many items could be read within a 30-minute period. It concluded that 31 documents could be viewed and read. In some instances, key word searches were used to determine whether the word "arrest" or any of its derivatives were included in particular documents. Although the Authority noted that, given the various sources and formats information is gathered from, key word searches were not suitable in every case. Having undertaken this sample search the Authority concluded that to review all of the documents (433,588), using the time taken with the sample search as an average, it would take 7,226 hours,
20. The Authority informed the Commissioner of the job role of the member of staff asked to undertake the searches.
21. The Authority recognised the view of the Applicant that information of the nature covered by part a) of their request should be easy to store, process and extract from a database. Nonetheless, as this is not a field which is included in the database used by it, the Authority argued that it is not recorded in a way in which it could be extracted.

#### *The Commissioner's findings*

22. Having considered all of the relevant submissions and the terms of the Applicant's request, the Commissioner accepts that the Authority's interpretation of the scope of the request was reasonable.
23. The Commissioner acknowledges that the Applicant believes the Authority should be capable of providing the information they requested at part a) without exceeding the £600 cost limit under FOISA.
24. However, the Commissioner must determine if section 12(1) of FOISA is applicable in this case, focusing on the Authority's current recording systems rather than the potential capabilities desired by an Applicant.
25. The Commissioner accepts from the submissions received that the Authority uses certain systems (CLUE and shared network drives) to manage information relating to investigations, but that these systems do not contain a particular field which records whether a Police Officer has been arrested by the Authority. It has also been noted that a record of the number of times the Authority has arrested a Police Officer is not a metric they are required to record for reporting purposes.
26. The Commissioner considers the analysis provided by the Authority of the cost of locating, retrieving and providing the information to be reasonable, taking account of the work that would have to be undertaken and the number of files which would have to be reviewed.
27. The Commissioner also noted that, although the Applicant believes it should be relatively straightforward for the Authority to provide the requested information, given the systems and search capabilities in place, the number of investigations likely covered by the request makes this challenging.
28. Considering all the circumstances, the Commissioner is satisfied that the Authority could not have complied with part a) of the Applicant's request within the £600 cost limit. Consequently, he finds that the Authority was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with this part of the request.

## **Section 15 - Duty to advise and assist**

29. Section 15(1) requires a Scottish public authority, so far as 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. Section 15(2) states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms to the <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/> (the Section 60 Code), is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).
31. The Section 60 Code provides guidance to Scottish public authorities on the practice which Scottish Ministers consider desirable for authorities to follow in connection with the discharge of their functions under FOISA. The Section 60 Code provides (at 9.4.3):

"When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice [the authority] may wish to take account of how much the cost limit has been exceeded. Any narrower request would be a separate new request and should be responded to accordingly."
32. In terms of the duty to advise and assist under section 15 of FOISA, the Authority commented that it had considered whether it would have been beneficial to ask the Applicant to narrow the scope of her request but, having carried out a sample exercise to understand what the cost to it would be of fulfilling a request with a narrower timeframe, it concluded it would not. However, in its response to the requirement for review, it did not communicate this consideration to the Applicant. While it may not have advanced the Applicant's position, it would have been helpful for the Authority to explain this, to demonstrate its commitment to the duty under section 15.
33. Furthermore, the Commissioner considers that it may have been helpful for the Authority to consider whether it was possible for them to signpost the Applicant to any other Scottish public authority which might hold the information covered by part a) of their request, and which may be able to provide it to the Applicant within the cost limit. The Commissioner is aware that there is at least one other Scottish public authority which could hold this information and he is of the view that, in order for it to fulfil its duty under section 15 of FOISA, it would be appropriate for the Authority to signpost the Applicant to that other authority.
33. The Commissioner finds that by not setting out its consideration around whether it would have been worthwhile for the Applicant to narrow the scope of their request, and also failing to signpost the Applicant to another Scottish public authority which may hold the information requested, the Authority did not comply with its duties under Section 15 (Duty to provide advice and assistance) of FOISA.
34. The Commissioner therefore requires the Authority to signpost the Applicant to any other Scottish public authority which may hold the information covered by part a) of their request.

## **Decision**

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

The Commissioner finds that the Authority was entitled to notify the Applicant, in line with section 12 of FOISA, that it was not obliged to comply with part a) of their request. However, he finds that by not informing the Applicant of its consideration around whether it would be appropriate for them to reduce the scope of their request, and by not signposting them to another public authority which might hold information within scope of their request, the Authority failed to fulfil its duty under section 15 of FOISA.

The Commissioner requires the Authority to signpost the Applicant to any other Scottish public authority which may hold the information covered by part a) of their request, by 9 January 2025.

## **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.

## **Enforcement**

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.



**Euan McCulloch**  
**Head of Enforcement**

**25 November 2024**