



Scottish Information
Commissioner
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Decision Notice 286/2024

Data contained within Digital Strategy relating to referrals regarding child sexual abuse imagery

Authority: Police Service of Scotland
Case Ref: 202301614

Summary

The Applicant asked the Authority for information regarding an increase in child sexual abuse imagery referrals referenced in its Digital Strategy 2023. The Authority informed the Applicant that it did not hold the information. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 15 September 2023, the Applicant made a request for information to the Authority. He referred to page 6 of the Authority's [Digital Strategy 2023](https://www.spa.police.uk/spa-media/wdnj5no0/item-11-digital-strategy-strategic-outline-business-case.pdf)¹, which included the following text:

¹ <https://www.spa.police.uk/spa-media/wdnj5no0/item-11-digital-strategy-strategic-outline-business-case.pdf>

“650% increase of referrals regarding child sexual abuse imagery over a 9-year period”. He asked the Authority:

- 1) To provide the number of referrals for each year
 - 2) If referrals meant those made by the police to a specialist police unit, to provide a geographic breakdown of the referrals for the first and final years only
 - 3) If referrals meant from external sources to the police, to provide a breakdown of who made the referrals (e.g. schools and social workers) for the final year only.
2. The Authority responded on 16 October 2023, with a notice, under section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that the figure referred to in the Applicant’s request and its Digital Strategy 2023 was data produced by the National Crime Agency (NCA).
 3. On the same day, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not believe that the Authority did not hold the information requested.
 4. The Authority notified the Applicant of the outcome of its review on 13 November 2023, which fully upheld its initial response.
 5. On 16 December 2023, 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 believed that the Authority did hold the information requested.

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 2 February 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 to answer specific questions. These primarily related to the steps the

Commissioner’s analysis and findings

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

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

10. 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, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. This is not necessarily to be equated with information

an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

12. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority.
13. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant recorded information is actually held by the public authority (or was, at the time it received the request).

The Applicant's submissions

14. The Applicant did not believe that the NCA could have calculated the 650% increase in referrals regarding child sexual abuse imagery referred to in the Authority's Digital Strategy 2023 without first obtaining data from the Authority. He considered that the figure was based on raw data or "building blocks" held by the Authority and that it could examine the raw data and compile the information requested.
15. The Applicant noted that the Digital Strategy 2023 was a report by the Authority and that the figure he referred to in his request was taken from a section of the report titled "Key Facts & Figures About [the Authority]".
16. If the Authority did not hold the information requested, the Applicant explained that he considered this implied that the Authority had allowed "unchecked statistical claims" by the NCA to enter an official report of the Authority. He noted his belief that procedures were in place to prevent such a thing from happening and that "key" facts and figures would be checked before publication.

The Authority's submissions

17. The Authority confirmed that the figure referred to in the Applicant's request was data taken from the NCA and explained that it held no further information in relation to that data.
18. The Authority explained that it assumed the figure related to all referrals to the NCA regarding child sexual abuse imagery, which would include referrals from all UK police forces. Consequently, the Authority stated that it had no means of collating the information requested by the Applicant.
19. In determining whether it held any relevant information, the Authority confirmed that searches were carried out by several departments, including: the Chief Digital Information Officer, the ICT team, the Assistant Chief Constable for Major Crime, the Specialist Crime Division, the Analysis and Performance Team, the Public Protection Unit, the Policing in a Digital World Team and the Internet Investigations Unit.
20. The Authority stated that the origin of the figure referred to in the Applicant's request was explained by a member of the Policing in a Digital World Team, who confirmed that the figure was taken from NCA data. The Authority confirmed that it held no further information in relation to that data, which was produced by an external contractor as part of engagement that contractor undertook with the NCA.

21. The Authority also provided evidence from the Internet Investigations Unit, who confirmed the position set out by the Policing in a Digital World Team. The Authority stated that there was no suggestion that it had ever held the information requested.

The Commissioner's view

22. Having carefully considered the request in full, the Commissioner is satisfied that the Authority's interpretation of the request was reasonable. In other words, he agrees that the request sought information in relation to the 650% increase of referrals regarding child sexual abuse imagery over a nine-year period.
23. Having fully considered the Authority's submissions, the Commissioner accepts that the figure in question was taken from data produced by the NCA and that it likely relates to all referrals over the period specified (i.e. referrals from all UK police forces).
24. Given the explanations and submissions provided, the Commissioner considers that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and he is satisfied that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
25. The Commissioner understands why the Applicant believed and expected the specified information to be held by the Authority, particularly since the Digital Strategy 2023 produced the figure referred to in his request in a section titled "Key Facts & Figures about [the Authority]". However, as rehearsed earlier, he accepts that the figure in question was taken from data produced by the NCA.
26. Nevertheless, the Commissioner has considered whether the Authority could have, in response to part 1 of the request, simply provided the number of referrals it had made itself to the NCA regarding child sexual abuse imagery over the period specified in the request.
27. However, after considering part 1 of request in the full context of the request, the Commissioner accepts it was reasonable for the Authority to have interpreted it as seeking an answer based on a full data set (i.e. the data that informed the NCA's figure). In other words, he accepts that it was reasonable for the Authority to state that it did not hold the information requested because it does not (and did not, on receipt of the request) hold the full data set that informed the NCA's figure and instead simply reproduced that data in one of its reports.
28. The Commissioner has no locus to comment on the Applicant's concerns regarding the Authority allowing what he described as "unchecked statistical claims" by the NCA to enter an official report of the Authority, nor on how the Authority chose to present that data in its report.
29. In all the circumstances, the Commissioner concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

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.

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.

David Hamilton
Scottish Information Commissioner

09 December 2024