

Decision Notice

Decision 004/2015: Ms Suzanne Kelly and the Chief Constable of the Police Service of Scotland

Investigation information

Reference No: 201402584

Decision Date: 8 January 2015



Scottish Information
Commissioner

Summary

On 20 August 2014, Ms Kelly asked the Chief Constable of the Police Service of Scotland (Police Scotland) for information relating to an investigation into Aberdeen City Council's property transactions. Police Scotland told Ms Kelly that they did not hold the information requested.

Following an investigation, the Commissioner accepted this.

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. In 2007, an internal audit was conducted into a number of property transactions concluded by Aberdeen City Council (the Council).
2. Thereafter, an external review was conducted on the instructions of the Controller of Audit. On 22 April 2008, Audit Scotland published the Controller of Audit's report¹, which stated (at paragraph 32):
The internal audit investigation did not reveal evidence of fraud by Council staff. Grampian Police have a copy of the internal audit and external audit reports and are currently considering the position.
3. In October 2013, Ms Kelly wrote to Police Scotland, seeking a copy of the full report made in 2008 by Grampian Police in relation to the property transactions which were the subject of the above audit. In response, she was informed that no such report was held.
4. On 20 August 2014, Ms Kelly wrote to Police Scotland with a fresh information request. Basically, this sought all information held relating to any police investigation carried out into Aberdeen City Council property transactions, from 2008 onwards.
5. On 29 August 2014, responding to a request for clarification from Police Scotland, Ms Kelly confirmed that the information she sought related to investigations by Grampian Police following the 2008 Audit Scotland report.
6. On 26 September 2014, Police Scotland provided Ms Kelly with a response. They informed her that the only information held was a correspondence note regarding contact with the Council in relation to this matter (the content of which was provided). Otherwise, Police Scotland stated that the requested information was not held.

¹ http://www.audit-scotland.gov.uk/docs/local/2008/nr_080430_aberdeen_property.pdf

7. On 4 October 2014, Ms Kelly wrote to Police Scotland requesting a review. She did not accept that this was all the relevant information held by Police Scotland.
8. Police Scotland notified Ms Kelly of the outcome of their review on 31 October 2014. They confirmed that they did not hold any further information. Specifically, they confirmed that they no longer held the audit report passed to Grampian Police in 2008.
9. On 7 November 2014, Ms Kelly wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. She refused to accept that no relevant information was held.

Investigation

10. The application was accepted as valid. The Commissioner confirmed that Ms Kelly made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision. The case was then allocated to an investigating officer.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 25 November 2014, the investigating officer notified Police Scotland in writing that Ms Kelly had made a valid application and invited them to comment on this application. They were asked to explain the steps they had taken to identify and locate the information requested, and to provide background information on any investigation carried out.
12. Police Scotland responded, confirming that they did not hold the information requested. They provided explanations of their internal processes and the relevant searches, confirming that the only information held was within the correspondence note identified in their response to Ms Kelly.

Commissioner's analysis and findings

13. 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 relevant in this case.
14. The information to be given is that held by the authority at the time the request is received, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the date of receipt and the time the information is given (section 1(4)). 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.
15. The Commissioner notes the submissions provided by Ms Kelly, in which she provides reasons why she considers Police Scotland should hold the information requested and should have held it at the time of her request.
16. In their submissions to the Commissioner, Police Scotland explained that no crime report or police report had been created. In this connection, the Commissioner notes that the audit report in question did not contain any allegation of fraud or any other crime.

17. Police Scotland explained the searches and enquiries they undertook to ascertain whether they held any further information falling within the scope of Ms Kelly's request, with supporting evidence confirming the outcomes. These included searches of relevant electronic records, paper files and consultation with the officers concerned. The conclusion of all of these searches and enquiries was that the information was not held.
18. Police Scotland confirmed that staff involved at the time recalled that "subject reports" had been submitted to the Area Procurator Fiscal, to allow consideration of whether the matter should be proceeded with any further. Police Scotland confirmed that it no longer held these: it acknowledged that they may have been deleted, but considered any deletion would have been in good faith. They reiterated that none of the information would have been held for the purposes of a criminal investigation, so it would not have been subject to the retention periods applicable to such information.
19. Having considered all relevant submissions and the terms of the request, and taking into account the outcome of the Controller of Audit's report, the Commissioner accepts that Police Scotland carried out adequate searches and other enquiries to ascertain whether they held any information falling within the scope of Ms Kelly's request. She accepts that they held no information in addition to that contained in the correspondence note, which has been provided to Ms Kelly. In the circumstances, there would no reasonable expectation that further information, if it were ever held, would have been retained at the time of Ms Kelly's request.

Decision

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

Appeal

Should either Ms Kelly or the Chief Constable of the Police Service of 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

8 January 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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