

Decision Notice

Decision 091/2016: Mr David Eyre and the Chief Constable of the Police Service of Scotland

Memorandums of Understanding

Reference No: 201600395

Decision Date: 27 April 2016



Scottish Information
Commissioner

Summary

On 5 January 2016, Mr Eyre asked the Chief Constable of the Police Service of Scotland (Police Scotland) for copies of all Memorandums of Understanding entered into by Police Scotland or its predecessors since the year 2000. Police Scotland stated that complying with the request in full would cost more than £600 and 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), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance)

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 5 January 2016, Mr Eyre made a request for information to Police Scotland. The information requested was copies of all Memorandums of Understanding (MOUs) entered into by Police Scotland or its preceding regional forces since the year 2000.
2. Police Scotland responded on 2 February 2016. It informed Mr Eyre that responding to his request would be an extensive piece of work and to do so would exceed the cost limit of £600 prescribed for the purposes of section 12(1) of FOISA.
3. Police Scotland further explained that MOUs would be held by almost every department and division across the Service. This meant that refining his request would be problematic, as there was (at that time) no central record of what was held. It also stated that work was ongoing to rectify this situation and whilst section 12 has been engaged, if he wished to contact Police Scotland to revisit the terms of his request, or provide a specific topic or business area of interest, Police Scotland would endeavour to assist.
4. On 3 February 2016, Mr Eyre wrote to Police Scotland, challenging their claim that section 12(1) would be engaged.
5. Police Scotland notified Mr Eyre of the outcome of their review on 29 February 2016. They upheld the original decision, explaining that every department and each of the 13 divisional areas would have to be contacted in order to furnish the data sought. It provided a non-exhaustive list of 48 national and regional offices that would require to be contacted. It estimated that if it took each area two hours to identify, locate and provide MOUs currently in use, this would equate to 96 hours or £1,440.00.
6. On 1 March 2016, Mr Eyre wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Eyre did not accept that excessive cost

would be incurred in meeting his request, noting that Police Scotland had acknowledged the information was available.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Eyre 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.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 29 March 2016, the investigating officer notified Police Scotland in writing that Mr Eyre had made an application. Police Scotland were invited to comment on this application and to answer specific questions. These focused their reliance on section 12(1) of FOISA.
9. Police Scotland responded with submissions. Mr Eyre also provided further submissions during the investigation.

Commissioner's analysis and findings

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

Section 12(1) – excessive cost of compliance

11. Section 12(1) 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 set at £600 (regulation 5 of the Fees Regulations). Consequently, the Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request for that information would exceed this sum.
12. The projected costs the 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 locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
13. Police Scotland submitted that section 12(1) applied to Mr Eyre's request. It confirmed that it held information falling within the scope of Mr Eyre's request, but argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit.
14. Police Scotland explained that an MOU could also be described as a Partnership Agreement (PA), Working Protocol (WP) or Information Sharing Protocols (ISP). Police Scotland explained that they did not hold a central register of MOUs, something which (as explained to Mr Eyre) it was taking steps to rectify. They acknowledged Mr Eyre's point that these were operational documents, but that did not preclude there being a very large number of them.
15. Police Scotland confirmed that MOUs, once agreed and signed, should be available on its intranet, but there was no guarantee that this was being done. It was possible that MOUs

agreed before the inception of Police Scotland would also be published on the intranet, but again this could not be guaranteed. Central registers were not maintained by any of the Force's predecessors.

16. Having conducted an electronic search using the search criteria "MOU", "PA", "WP" and "ISP", Police Scotland confirmed that it had identified 1,540 documents which appeared to be of relevance. It provided evidence of the searches. There would be additional documents held within divisions and departments, but it could not confirm the number of these.
17. Police Scotland stated that to print and check each document (as required to determine if they were of relevance to the request) would take approximately 10 minutes per document, which would give a total of approximately 256 hours for the 1,540 documents identified. It stated that the work required would typically be conducted by a Disclosure Officer (the lowest grade they considered appropriate for the work) at an hourly cost of £14.20. The total cost of this work, therefore, would be approximately £3,644.00.
18. The Commissioner notes that even if it only took two minutes per document, this estimate still be in excess of £720.
19. Police Scotland further explained that the estimate did not include information held elsewhere within various divisions and department. It referred to the non-exhaustive list of 48 business areas identified in responding to Mr Eyre's requirement for review. They stated that if each area took two hours, this would equate to 96 hours. At £15 per hour, this would equate to £1,440.00.
20. Again, if the estimated time for each area was reduced to one hour per area, this would still give an estimate of £720.
21. Taking account of all the circumstances, the Commissioner is satisfied that Police Scotland has provided a reasonable estimate of the cost of complying with Mr Eyre's request for information. Given the nature of the work required, the Commissioner accepts that the request could not have been responded to within the £600 limit.
22. Consequently, the Commissioner is satisfied that Police Scotland was entitled to rely on section 12(1) of FOISA in relation to Mr Eyre's information request, and therefore was under no obligation to comply with the request.
23. Having reached this conclusion, the Commissioner notes that in its initial response Police Scotland attempted to give Mr Eyre advice and assistance, in line with the authority's duty under section 15 of FOISA.
24. Mr Eyre's request was very broad in its scope, encompassing all MOUs held by Police Scotland since the year 2000, whatever the subject matter or organisation referred to. Police Scotland explained this to Mr Eyre, noting for example that a topic or business area may be searchable and considered within the cost limit. Mr Eyre did not take up this offer. In the circumstances, the Commissioner believes Mr Eyre could have narrowed the scope of his request to a topic or business area with the advice given, to bring it within the £600 limit, had he wished to do so.

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 Mr Eyre.

Appeal

Should either Mr Eyre 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 April 2016

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.

...

(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.

...

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.

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