

Decision Notice 137/2020

Minutes of a specified meeting

The Applicant

Public authority: The Chief Constable of the Police Service of Scotland

Case Ref: 202000570



Scottish Information
Commissioner

Summary

Police Scotland were asked for the minutes of a specified meeting.

They stated that no minutes were held for this meeting.

The Commissioner investigated and found that Police Scotland did not hold any information falling within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15 (Duty to provide advice and assistance); 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. On 7 October 2019, the Applicant made a request for information to the Chief Constable of Police Scotland (Police Scotland). The information requested was: *a copy of the minutes for a meeting held in Wick Assembly Rooms, on 20 December 2007, between the former Chief Constable of Northern Constabulary, Mr I Latimer, the McLeod family, and other parties present at that meeting.*
2. Police Scotland responded on 4 November 2019. They notified the Applicant, in terms of section 17 of FOISA, that they did not hold the minutes.
3. On the same date, the Applicant wrote to Police Scotland requesting a review of their decision. He believed the minutes were held by Police Scotland for administrative purposes.
4. Police Scotland notified the Applicant of the outcome of their review on 2 December 2019. They explained that they had consulted staff in the relevant team who maintain all records in relation to the subject matter of the request, and confirmed that the information sought was not held by Police Scotland.
5. On 22 May 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of Police Scotland's review because he believed the information existed. He also felt that Police Scotland did not provide him with any advice and guidance in terms of where else he could obtain the information requested.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 27 July 2020, Police Scotland were notified in writing that the Applicant had made a valid application and the case was 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. Police Scotland were invited to comment on this application and to answer specific questions. These related to the measures they had taken to locate any information held and whether they should have given advice and guidance to the Applicant as to where else he may be able to locate the information.
9. Submissions were received from both Police Scotland and the Applicant.

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 him by both the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Section 17(1) - Information not held

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

Submissions from the Applicant

12. During the investigation, the Applicant advised the investigating officer that he had given the incorrect date of the meeting in question in his information request and that it had in fact taken place on 19 December 2007.
13. The Applicant stated that he had attended the meeting in question and that a specific officer was assigned to record the minutes. He also stated that the minutes were subsequently made available as recorded information.

Submissions from Police Scotland

14. Police Scotland submitted that, due to the personal nature of the meeting in question, it was unlikely to be the type of event that would have been minuted. It was the view of Police Scotland that, even if minutes had been taken, they would likely have been exempted from disclosure into the public domain due to the sensitivity of the matter in question.
15. Police Scotland explained that a specific Governance and Review Team holds a full inventory of all records held regarding wider subject matter relating to the request. This includes extensive records regarding interaction with relevant people over a long time period.
16. The inventory was searched and Police Scotland confirmed that no minutes were held for the meeting in question. The search terms used by Police Scotland included records clearly identified as "minutes" and (after having been informed of the correct date of the meeting by the investigating officer) the dates of both 19 and 20 December 2007. Searches were also carried out using the names of two specified individuals and using other key words.
17. The searches produced no relevant information.

The Commissioner's conclusions

18. The Commissioner notes that the information request made to Police Scotland contained a specific date, 20 December 2007. The terms of the Applicant's request were therefore limited to that specific date in relation to a meeting which had taken place.

19. The Commissioner notes that Police Scotland widened the scope of their search to include the dates of both 19 and 20 December 2007 during the investigation and found no relevant minutes for either date.
20. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that Police Scotland took adequate, proportionate steps to establish whether they held any information that fell within the scope of the request. He is satisfied that the searches carried out by Police Scotland would have been capable of identifying any information held and relevant to the request.
21. The Commissioner is therefore satisfied, on the balance of probabilities, that Police Scotland do not (and did not, on receipt of the request) hold the information requested. He finds that Police Scotland were therefore correct to give notice, in terms of section 17(1) of FOISA, that they did not hold the information requested.

Section 15 - advice and assistance

22. Section 15(1) of FOISA provides that a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
23. Section 15(2) of FOISA provides that a Scottish public authority which conforms to the Section 60 Code of Practice¹ is to be taken to comply with its duty under section 15(1).
24. The Commissioner notes that, in his review requirement, the Applicant did not ask Police Scotland whether they could advise him where else he might obtain the information.
25. He also notes that Police Scotland did, however, advise the Applicant, “[S]hould you require any further assistance please contact Information Management on [telephone number] quoting the reference number given”.
26. Paragraph 9.3.3 of the Section 60 Code of Practice states,
Where an authority does not hold the information but is aware that it is held by another public authority, it should in its refusal notice provide the applicant with contact details of the authority holding the information and suggest that the applicant makes a new information request to that authority...
27. In this case, however, Police Scotland were unaware of the information being held by another Scottish public authority. Therefore, it is difficult to see what could have been done by them to provide advice and assistance to the Applicant as to whether the minutes may have been held elsewhere.
28. In all the circumstances, the Commissioner is satisfied that Police Scotland were not required to provide any additional advice and assistance to discharge their duty under section 15 of FOISA in relation to the Applicant’s request.

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

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 the Applicant.

Appeal

Should either the Applicant 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

28 October 2020

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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

...

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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