

Decision Notice 163/2021

Problem profile assessments

The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202001421



Scottish Information
Commissioner

Summary

Police Scotland was asked for any child exploitation problem profiles held from 1 January 2010. Police Scotland stated that no such profiles were held. The Commissioner investigated and found that Police Scotland were not entitled to claim that the information was not held and required them to provide a revised review response.

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. On 9 August 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). It stated:
Please provide a copy of all problem profile assessments produced or commissioned by your police force related to child sexual exploitation in your force area from January 1st 2010 to date.
2. On 28 September 2020, the Applicant clarified the request by adding:
I'm interested in more strategic level problem profiles for larger geographical areas such as towns and cities.
3. Police Scotland responded on 20 October 2020, stating that they did not hold any problem profiles relating to child sexual exploitation and applied section 17(1) of FOISA. Police Scotland stated that any report of child exploitation was investigated robustly, on an individual case basis.
4. On 28 October 2020, the Applicant wrote to Police Scotland requesting a review of their decision. He stated that his request was for problem profiles, which tended to be force level strategic documents that cover the status of child sexual offences in a force area. He stated that this was not statistical data to be exported from crime reporting systems, but tended to be held in PDF or word format. He added that many other police forces had been able to provide copies of these reports, to identically phrased requests, and that he had attached such examples from North Wales, Avon and Somerset and Gloucestershire police forces. He stated that he wished to be provided with the equivalent documentation for Police Scotland.
5. Police Scotland notified the Applicant of the outcome of its review on 24 November 2020 which upheld its application of section 17 of FOISA. Police Scotland explained that its child sexual offences department had checked the records and had confirmed that no actual profile documents similar to the examples provided, were held. However, Police Scotland added that, whilst much of the type of information contained within the examples would in fact be held by it, or could be produced by it through analysis, it did not hold any actual problem profile reports themselves. Police Scotland stated that, as there was not a requirement under FOISA for new information to be created, it must conclude that the problem profiles were not held by it.

6. On 27 November 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 it highly likely that they held copies of these problem profiles, or at least similar documents that were nearly identical and which would fall within the scope of his request. He provided the following website links in support of his position, and argued that College of Policing guidelines (whilst covering only England and Wales) clearly set out what these documents were.
 - HM Inspectorate of Police in Scotland, page 23 of the report: <https://www.hmics.scot/sites/default/files/publications/HMICS20181213PUB.pdf>
 - Colleges of Policing Guidelines: <https://www.app.college.police.uk/app-content/intelligence-management/intelligence-products/>
7. The Applicant believed that Police Scotland had not completed adequate searches to ascertain whether it held any information falling within the scope of his request.

Investigation

8. 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.
9. On 23 December 2020, Police Scotland were notified in writing that the Applicant had made a valid application.
10. 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 what searches they had carried out to locate any relevant information and whether they wished to make any comments regarding the examples provide by the Applicant.

Submissions from Police Scotland

11. Police Scotland explained that its Analysis and Performance Unit (APU) provided all types of analysis within the organisation. It was a central depository for analytical products produced across Scotland. On receipt of the Applicant's information request, the exact wording of the request was sent to APU for a check of its systems for such reports. APU advised no such reports existed and the initial response was provided accordingly.
12. Police Scotland stated that at the review stage (and after the Applicant had provided Police Scotland with his examples of documents which had been provided from other police forces to demonstrate the type of report he was seeking to obtain from Police Scotland), the APU was asked to consider if Police Scotland held similar information and the APU confirmed once again they did not.
13. Police Scotland stated that, in considering the Applicant's request and the documents he highlighted which were referenced within an HMICS report, it would appear that the wording of the Applicant's request and HMICS's description of the document he referenced had caused some confusion. Police Scotland explained that Child Sexual Abuse and Child Sexual Exploitation have two different definitions, but can often be confused as being one and the same. To further confuse matters, both can take place off and online. Child Sexual Abuse is criminal – it will fall under clear criminal legislation and is generally easily identifiable as a crime. Child Sexual Exploitation is not criminal. It is behaviour which may

lead to child sexual abuse and can often be difficult to identify as the child may not even realise they are being exploited.

14. Police Scotland stated that the HMICS report described Police Scotland as holding a Problem Profile for Online Child Sexual Abuse. This had also caused difficulty as the report was in fact labelled as an analysis report by APU (as opposed to a Problem Profile) and clearly the subject matter of the report is Child Sexual Abuse (CSA) rather than Child Sexual Exploitation (CSE).
15. A national CSE Problem Profile had not been undertaken by Police Scotland. However, on further review, divisional Detective Superintendents had been asked to identify any CSE reports they had commissioned locally, and a number of documents were subsequently identified. Police Scotland stated that the request to the Detective Superintendents was wider than the Applicant's request in that they were asked to identify "*any analysis (whether officially labelled a problem profile or not) either as a standalone piece of work for CSE working groups or potentially as a result of a CSE investigation*". Some documents were found as a result of this wider search.
16. Police Scotland confirmed that it does employ Problem Profiles as a tool in its policing strategy. However, to clarify, it stated that it had not, to date, commissioned a National Problem Profile report specifically on CSE. Local Policing Divisions within Police Scotland, sometimes in collaboration with partners, had commissioned various analytical reports on CSE pertinent to their geographical areas. Police Scotland explained that Problem Profiles were used by it and were able to be used across any or all areas of its policing, but that this did not mean that the profiles had in fact been used in every area of policing.
17. After telephone discussions between Police Scotland and the Commissioner's Office, Police Scotland wrote to the Applicant on 7 July 2020 and advised him that it remained of the view that section 17(1) of FOISA applied in respect of his information request of 9 August 2020, but that it was willing to disclose to him, as a gesture of goodwill, information contained within some CSE Reports. Police Scotland still believed that the CSE Reports fell outwith the scope of his request but it disclosed some documents to him with parts of their contents redacted under various exemptions in sections 30, 34, 35, 38 and 39 of FOISA, and withheld other such documents in full.

Submissions from the Applicant

18. The Applicant disputed Police Scotland's position that the CSE reports fell outwith the scope of his request and he stated that he believed that they fell squarely within the description of a problem profile.
19. He argued that problem profiles were strategic reviews based on information gathered about the potential scale of a problem in the relevant area and that the content of the disclosed documents clearly matched that definition. He stated that CSE problem profiles were produced by divisions in Police Scotland were repeatedly referred to in documentation and reporting. He also provided the following website links in support of his position:

<https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/understanding-the-difference-the-initial-police-response-to-hate-crime.pdf>

<https://www.hmics.scot/sites/default/files/publications/HMICS20200226PUB.pdf>

[http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/Inquiries/CSE031 -
_Police_Scotland.pdf](http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/Inquiries/CSE031_-_Police_Scotland.pdf)

<https://www.scotsman.com/news/rotherham-style-child-abuse-scotland-probed-1999870>

20. The Applicant's view was that the CSE documentation clearly appeared to be problem profiles and argued that their structure, analysis and content was almost identical to problem profiles produced and disclosed by English and Welsh forces and the Police Service of Northern Ireland.
21. He did not accept that section 17(1) of FOISA should have been applied by Police Scotland because he believed that the CSE reports fell within the scope of his request and therefore relevant information had indeed held by Police Scotland at the time he made his request.

Commissioner's analysis and findings

22. In coming to a decision on this matter, the Commissioner considered those parts of the content of the CSE reports which were visible to him and 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.
23. In reaching his conclusion in this case he has taken cognisance the description of a "problem profile" in the HMICS thematic review of December 2018¹ which states, in its definitions and interpretations section:

A problem profile is a strategic review based on information gathered about the potential scale of a problem in the relevant area and

Forces need to understand the nature of [hate crimes] across their areas. This understanding is based on their assessment of available information and intelligence, which together guide their handling of the problem. The product of this activity is called a problem profile.
24. In reviewing the content available to him in the partially disclosed CSE reports, the Commissioner is of the view that, in general, it comprises strategic review information containing assessments reached through the analysis of gathered intelligence, in order to give an overview perspective of the nature of the scale of child exploitation in specific areas.
25. The Commissioner does not accept that a requester should be expected to know what the specific Police Scotland terminology is for certain types of information not how/where these types of information might be held by Police Scotland.
26. Part 2 of the Section 60 Code² states, at paragraph 5.3. to 5.3.1:

Authorities must provide appropriate advice and assistance to enable applicants to describe clearly the information they require.

.... The authority should remember that applicants cannot reasonably be expected to always possess identifiers such as file reference numbers or the description of a particular record.

¹ [understanding-the-difference-the-initial-police-response-to-hate-crime.pdf \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/understanding-the-difference-the-initial-police-response-to-hate-crime.pdf)

² <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek.

27. Although the documents are not labelled as a “problem profiles”, this does not mean they are not covered by the request. On a reasonable reading of the request, alongside the content of the CSE reports in question, the Commissioner is satisfied the CSE reports do fall within the scope of the Applicant’s request for problem profiles. This means Police Scotland were not entitled to notify the Applicant that the information was not held.
28. The Commissioner therefore requires Police Scotland to provide the Applicant with a revised review response other than in terms of section 17(1) of FOISA.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply 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, by incorrectly advising the Applicant that they did not hold any information falling within the scope of the request, Police Scotland failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires Police Scotland provide a revised review response to the Applicant, other than in terms of section 17(1) of FOISA, by 29 November 2021.

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.

Enforcement

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

Margaret Keyse
Head of Enforcement

14 October 2021

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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