

# Decision Notice

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## **Decision 180/2014 Mr Michael Roulston and the Chief Constable of the Police Service of Scotland**

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### **Employment information concerning senior officers**

Reference No: 201400656

Decision Date: 18 August 2014



Scottish Information  
Commissioner

## Summary

On 11 January 2014, Mr Roulston asked the Chief Constable of the Police Service of Scotland (the Police) for information concerning senior officers in the Police, including their salaries and benefits. The Police provided a response to some parts of Mr Roulston's request, disclosing some information and withholding the remainder. During the investigation, the Police responded to the remaining parts of the request.

Following an investigation, the Commissioner found that the Police had failed to respond to all parts of Mr Roulston's request within the statutory timescale.

The Commissioner ordered the Police to disclose the salaries of Assistant Chief Constables (ACCs). However, she found that the Police were entitled to withhold information about ACCs' benefits packages on the basis that it was personal data and exempt from disclosure under section 38(1)(b) of FOISA.

She also required the Police to provide some information to Mr Roulston to which no exemption had been applied.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(e)(ii) (Effect of exemptions); 10(1) (Time for compliance); 20(1) and (3)(c) (Requirement for review of refusal etc.); 21(1) and (4) (Review by Scottish public authority); 38(1)(b) and (2)(a)(i) and (b) and (5) (definitions of "the data protection principles", "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of personal data); Schedules 1 (The data protection principles) (the first data protection principle) and 2 (Conditions relevant for the purposes of the first principle: processing of any personal data: condition 6)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 11 January 2014, Mr Roulston emailed the Police via the [whatdotheyknow website](http://www.whatdotheyknow.com/)<sup>1</sup>. Mr Roulston referred to an information request which he had made previously to the Scottish Police Authority (SPA). He stated that he had been informed by the SPA that some of the information he had asked for would be held by the Police. Mr Roulston's request was as follows:

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<sup>1</sup> [www.whatdotheyknow.com/](http://www.whatdotheyknow.com/)

*The following request originally submitted to the SPSA, transferred to the SPA, referred to the Information Commissioner has partially resulted in a referral to Police Scotland for some of the information (the SPA does not specify which information it believes you hold).*

*“The SPSA website states the following*

*‘In police there are currently eight Chiefs, nine DCCs [Deputy Chief Constables] and 13 ACCs [Assistant Chief Constables] costing around £4.8 million a year. The new service will have a much slimmer command structure of one Chief, four DCCs and six ACCs – costing less than £2 million a year.*

*All Assistant Chief Constables have been appointed on a permanent basis. The salary will be between £90,726 and £105,849, subject to experience’*

*Could you please confirm how many officers (excluding those who have been selected for one of the new posts in the single force) will continue to be paid on 1/4/13? [Part 1, question (1)]*

*Could you please confirm the numbers in each rank? [Part 1, question (2)]*

*Could you please confirm the dates that contracts expire for such Chief and Deputy Chief Constables respectively? [Part 1, question (3)]*

*For all ranks could you please give the dates of retirement for any officers who have indicated that they will leave before the anticipated date, whether employed on a contractual or permanent basis?” [Part 1, question (4)]*

*Could you please respond to this request as suggested by the SPA having regard to the following amendments due to the passage of time*

*(1) What was the current salary and benefits package for the present ACCs in [Police Scotland] (whether legacy officers following transition or those appointed to the six “real” ACC posts? [Part 2, question (1)]*

*(2) What is the current salary and benefits packages for the officers that are now in those ACC posts or who remain as legacy officers not listed on your website? (To include any non-ACPOS [Association of Chief Police Officers of Scotland] officer on temporary promotion) [Part 2, question (2)]*

*(3) The dates for retirement/resignation/transfer of any ACCs, DCCs or CCs [Chief Constables] on or after 01/4/13 (i.e. including those legacy officers of any ACPOS rank who benefitted from the transitional arrangements) [Part 2, question (3)]*

*(4) The number of legacy ACPOS officers of any rank still “on the payroll”. [Part 2, question (2)]*

2. The Police contacted Mr Roulston on 14 January 2014, asking him to clarify the information that he was seeking in Part 1 of his request.
3. Mr Roulston emailed the Police on 5 February 2014, providing clarification of his intentions in relation to Part 1 of his request.
4. The Police did not respond to Part 1 of the request. They responded to Part 2 of the request on 11 February 2014. In relation to questions (1) and (2) of Part 2, the Police informed Mr Roulston of the salaries for ACCs at 1 September 2013. They withheld information concerning benefits under section 38(1)(b) of FOISA on the basis that its disclosure would breach one or more of the data protection principles in the DPA. In relation to question (3),

the Police disclosed the number of leavers, but did not provide the contract expiry dates requested by Mr Roulston. In relation to question (4), the Police told Mr Roulston there were currently 13 legacy ACPOS officers within the Police Scotland structure.

5. On 17 February 2014, Mr Roulston emailed the Police requesting a review of their decision. The details of his review request are discussed later, but, in summary, he complained that the information about pay awards did not answer his question, which related to 1 April 2013. Mr Roulston also argued that the risk of identification (i.e. through the disclosure of personal data) was “a peril of high rank”. He considered that the information he was seeking was about the rank, rather than about any individual. Mr Roulston contended that information about salaries and bonuses was a matter of public interest.
6. The Police notified Mr Roulston of the outcome of their review on 17 March 2014. The Police informed Mr Roulston that, in their view, he had only expressed dissatisfaction with their response to questions (1) and (2) (of Part 2).
7. In relation to question (1) of Part 2, the Police acknowledged that they had not provided the salary details as they stood at 1 April 2013. The Police now informed Mr Roulston that the relevant salary figure would have ranged between two specified figures, depending on experience. They informed Mr Roulston that they considered the exact salary information to be exempt from disclosure in terms of section 38(1)(b) of FOISA. The Police also stated that they considered the benefits packages for individual officers to be exempt from disclosure in terms of section 38(1)(b).
8. On 20 March 2014, Mr Roulston wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Police’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Roulston made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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10. On 4 April 2014, the Police were notified in writing that an application had been received from Mr Roulston and were asked to provide the Commissioner with the information withheld from him. The Police responded with the information requested and the case was then allocated to an investigating officer.
11. The investigating officer subsequently contacted the Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. The Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested. The Police were also asked to explain why they did not respond to Part 1 of Mr Roulston’s request and why they carried out a review only in respect of questions (1) and (2) of Part 2.
12. The Police responded on 9 June 2014, providing submissions on their application of the exemption in section 38(1)(b) of FOISA. The Police also explained why they had interpreted Mr Roulston’s request and requirement for review in the way that they did.
13. At this stage, the Police acknowledged that they had not fully addressed question (3) of Part 2. On 9 June 2014, the Police disclosed additional information to Mr Roulston which they considered would answer this request.

14. Following discussions with the investigating officer, the Police responded to Part 1 of Mr Roulston's request on 23 June 2014.
15. The investigating officer subsequently sought (and received) submissions from Mr Roulston on the Police's application of the exemption in section 38(1)(b) of FOISA.

## **Commissioner's analysis and findings**

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16. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Roulston and the Police. She is satisfied that no matter of relevance has been overlooked.

### **The initial handling of the request**

17. As noted above, in their initial response to Mr Roulston, the Police did not refer to Part 1 of his request. In his application to the Commissioner, Mr Roulston stated that the Police had ignored Part 1 of his request in its entirety.
18. In their submissions to the Commissioner, the Police explained that, in their view, the wording of Mr Roulston's request suggested that he only wished his newly re-worded questions to be answered (i.e. Part 2). The Police understood that Mr Roulston had only included the first batch of questions as an illustration of the questions he had posed previously to the SPA. The Police stated that they had not addressed Part 1 of the request as they did not believe it to form part of Mr Roulston's request.
19. As noted above, the Police contacted Mr Roulston on 14 January 2014 seeking clarification regarding the information that he was seeking in Part 1 of his request. Mr Roulston provided clarification to the Police on 5 February 2014.
20. The Commissioner has considered the Police's submissions. She accepts that the request submitted by Mr Roulston on 11 January 2014 may have been open to interpretation, insofar as Part 1 of the request could be construed as having been included for illustrative purposes.
21. However, in the Commissioner's view, the fact that the Police sought, and received, clarification from Mr Roulston regarding Part 1 of his request suggests that he intended Part 1 to comprise part of his request and expected the Police to respond to it. The Commissioner considers that after seeking and receiving clarification in relation to Part 1, the Police ought to have concluded that it formed part of Mr Roulston's request, and should have responded appropriately.
22. Additionally, the Commissioner notes that the Police initially failed to respond fully to question (3) in Part 2. The Commissioner is pleased to note that this was subsequently rectified.
23. By failing to identify and respond to all parts of Mr Roulston's information request, the Commissioner finds that the Police failed to comply with the timescales laid down in section 10(1).
24. Given that the Police subsequently responded to all questions in Parts 1 and 2, the Commissioner does not require them to take any action in response to this breach.

### **The handling of the requirement for review**



25. Section 20(1) of FOISA provides that an applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information may require the authority to review its actions and decisions in relation to that request.
26. Section 20(3)(c) provides that the requirement for review must specify the request to which the requirement for review relates and the matter which has given rise to the applicant's dissatisfaction.
27. Section 21(1) of FOISA obliges an authority which receives a requirement for review to carry out a review and notify the applicant of the outcome within 20 working days of its receipt. Section 21(4) specifies the actions that an authority may take following a review.
28. In his application to the Commissioner, Mr Roulston expressed dissatisfaction that the Police had assumed he was dissatisfied only with their response to questions 1 and 2 of Part 2. He noted that, in his requirement for review, he had stated "In itself, the response simply does not answer my request".
29. The Police submitted that, in his request for review of 17 February 2014, Mr Roulston had expressed dissatisfaction only with their response to his questions regarding pay awards and bonuses and, therefore, was only unhappy with their responses to questions (1) and (2) of Part 2. In their view, they had provided answers to questions (3) and (4) of Part 2 and they had not understood that Mr Roulston was also unhappy with these responses.
30. The Commissioner has considered the wording of Mr Roulston's requirement for review, which stated (verbatim): "*In itself the response simply does not answer my request The relevant date was 1/4/13 and pay awards made since that date do not answer my question.*"
31. In the Commissioner's view, it is understandable that the Police interpreted the requirement for review as expressing dissatisfaction only with the response to questions (1) and (2) in Part 2 (given that they had interpreted the original request as requiring a response only to Part 2). Clearly, the Police had provided answers to all four questions in Part 2. Mr Roulston had stated that the response did not answer his request, but provided no reasons as to why this was the case, beyond his statement regarding the relevant date and his reference to pay awards.
32. On that basis, the Commissioner takes the view that it was reasonable for the Police to construe the requirement for review as applying only to the responses concerning salaries and bonuses (i.e. the responses to questions (1) and (2) of Part 2). Consequently, she finds that the Police were obliged to carry out a review only in relation to those responses.
33. Given that the Police notified Mr Roulston of the outcome of their review on 17 March 2014, the Commissioner is satisfied that they complied with the requirements of sections 21(1) and 21(4) of FOISA in dealing with Mr Roulston's requirement for review in relation to the matters specified in the requirement for review.

#### **Section 38(1)(b) – personal data**

34. The Police applied the exemption in section 38(1)(b) to the specific salary information of ACCs (as at 1 April 2013) sought in questions (1) and (2) of Part 2 and also to the information regarding benefits packages for the officers concerned. This was on the basis that the information comprised the personal data of those individuals. The Police considered that the disclosure of this information would breach the first data protection principle of the DPA as disclosure would be unfair to the data subjects and would fail to satisfy a condition in Schedule 2 to the DPA.

35. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or, as appropriate, section 38(2)(b), exempts information from disclosure if it is “personal data” (as defined in section 1(1) of the DPA) and its disclosure would contravene one or more of the data protection principles set out in Schedule 1 to the DPA.
36. In order to rely on this exemption, the Police must show that the information being withheld is personal data for the purposes of the DPA and that its disclosure into the public domain (which is the effect of disclosure under FOISA) would contravene one or more of the data protection principles to be found in Schedule 1 to the DPA.

*Is the information personal data?*

37. Personal data are defined in section 1(1) of the DPA as data which relate to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix).
38. The Commissioner is satisfied that the information is personal data, in line with the definition in part a) of section 1(1) of the DPA. Living individuals, i.e. those officers who are the subject of the information, can be identified from this information. Given its nature (the name of the individual, their salary and any additional benefits that they received), the Commissioner is satisfied that the information clearly relates to them.

*Would disclosure of the personal data contravene the first data protection principle?*

39. As noted above, the Police argued that making this information available would breach the first data protection principle. This states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met. In the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA must also be met. The processing in this case would comprise making the information publicly available in response to Mr Roulston’s request.
40. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and she is satisfied that the personal data under consideration in this case do not fall into any of the categories set out in that definition. Therefore, it is not necessary to consider the conditions in Schedule 3 in this case.
41. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition which permits the personal data to be disclosed, it is likely that disclosure would also be fair and lawful.
42. The Commissioner will first go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. Where a Schedule 2 condition can be met, she will then go on to consider whether disclosure of the personal data would otherwise be fair and lawful.
43. When considering the conditions in Schedule 2, the Commissioner has noted Lord Hope’s comment in the case of *Common Services Agency v Scottish Information Commissioner [2008] UKHL 472* (the CSA case) that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interests of the data subject.

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<sup>2</sup> <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>

*Can any schedule 2 conditions be met?*

44. The Commissioner considers that the only condition in Schedule 2 to the DPA which might apply in this case is condition 6. Condition 6 allows personal data to be processed if that processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subjects.
45. There are, therefore, a number of tests which must be met before condition 6(1) can apply. These are:
- i. Is Mr Roulston pursuing a legitimate interest or interests?
  - ii. If yes, is the processing (in this case, the disclosure of the information) necessary for the purposes of those interests? In other words, is the processing proportionate as a means and fairly balanced to its ends, or could these legitimate interests be achieved by means which interfere less with the privacy of the data subjects.
  - iii. Even if the processing is necessary for Mr Roulston's legitimate interests, is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject? As noted by Lord Hope in the CSA case, given that there is no presumption in favour of the release of personal data, the legitimate interests of Mr Roulston must outweigh the rights, freedoms or legitimate interests of the data subjects before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that the Police were correct to refuse to disclose the personal data to Mr Roulston.

*Is Mr Roulston pursuing a legitimate interest or interests?*

46. There is no definition within the DPA of what constitutes a "legitimate interest", but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's published guidance on section 38 of FOISA<sup>3</sup> states:
- "In some cases, the legitimate interest might be personal to the applicant – e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety."*
47. The Police noted that they were aware that Mr Roulston had a particular interest in this area and were satisfied that he had some degree of legitimate interest in the information under consideration.
48. Mr Roulston submitted that there was a public interest in knowing whether the cost savings which had been suggested in advance of the amalgamation of the former Police Constabularies had been achieved.
49. In this case, the Commissioner accepts that both Mr Roulston and the wider public have a legitimate interest in the information, given the high profile of the Police and the publicity surrounding the restructuring of the Police Service in Scotland.

*Is the processing necessary for the purposes of that interest?*

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<sup>3</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.aspx>



50. Having concluded that Mr Roulston has a legitimate interest in obtaining the personal data under consideration, the Commissioner must now consider whether disclosure of the personal data is necessary in order to satisfy the legitimate interests identified above. In doing so, she must consider whether these interests might reasonably be met by any alternative means.
51. The Police argued that there was already a significant amount of information about ACCs in the public domain, such as their salary range, the fact that they do not receive a bonus and that the only benefits they receive are housing allowances and a car. In their view, any legitimate interest that Mr Roulston had was already served by the publication of such information.
52. In the Police's view, the salary band for ACCs that they had provided to Mr Roulston satisfied his legitimate public interest in this specific information and it was not necessary for them to provide the exact salary amount for the individuals concerned.
53. The Commissioner is aware that Mr Roulston already has some information relating to the salaries of ACCs, from sources such as the website of the former Scottish Police Services Authority, and from the response to his request of 11 January 2014. However, the Commissioner does not consider that the information available to Mr Roulston would satisfy his legitimate interest in knowing whether the restructuring of the police service in Scotland has achieved the anticipated cost savings.
54. Having considered the information that has been withheld, the Commissioner considers that it would be necessary for the withheld personal data to be disclosed to Mr Roulston in order to achieve these legitimate interests. The Commissioner is not aware of any other viable means of meeting Mr Roulston's interests which would interfere less with the privacy of the data subjects than providing the withheld personal data. For this reason, the Commissioner is satisfied that disclosure of the information is necessary for the purposes of Mr Roulston's legitimate interests.

*Would disclosure cause unwarranted prejudice to the legitimate interests of the data subjects?*

55. The Commissioner is satisfied that disclosure of the withheld personal data would be necessary to fulfil Mr Roulston's legitimate interests, but must now consider whether that disclosure would cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects. As noted above, this involves a balancing exercise between the legitimate interests of Mr Roulston and the data subjects in question. Only if the legitimate interests of Mr Roulston outweigh those of the data subjects can the information be disclosed without breaching the first data protection principle.
56. In the Commissioner's briefing on the personal information exemption, she notes a number of factors which should be taken into account in carrying out the balancing exercise. These include:
  - whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
  - the potential harm or distress that may be caused by disclosure
  - whether the individual objected to the disclosure
  - the reasonable expectations of the individual as to whether the information should be disclosed

57. In their submissions, the Police argued that the amount of benefits paid to an officer were dependent on a number of factors such as whether the officer was married or separated, shared a house with another officer, what rank they were and the other officer's rank (if applicable).
58. The Police submitted that the amount eventually awarded was therefore clearly dependent on numerous factors which were personal to the individuals and was based on choices that they had made which might not relate to their working life.
59. Mr Roulston argued that similar information had been published previously by Police Boards. In his view, the high rank of the officers concerned meant that they should expect such scrutiny as part of their job.
60. The Commissioner has considered all of the submissions made by the Police and Mr Roulston when balancing the legitimate interests in this case.

*Information on salaries*

61. The Commissioner considers that senior officers should have some expectation that information about their salaries may be disclosed into the public domain. The Commissioner notes that the Police were content to disclose information on ACC's salaries as at 1 September 2013. She also notes that similar information has been proactively published by Police Boards in the past<sup>4</sup>.
62. The Commissioner recognises that disclosure may cause some distress to the data subjects to the extent that disclosure would involve revealing, to some degree, their personal financial affairs. Consequently, she accepts that disclosure might cause some prejudice to the rights, freedoms and legitimate interests of the data subject as the information relates to some aspects of their personal financial affairs. However, the Commissioner is not satisfied that disclosure of the information would represent an unwarranted interference, given the seniority of the officers involved and the disclosure of similar information by the Police from 1 September 2013.
63. In relation to salaries, the Commissioner has balanced the legitimate interests of the data subjects against the legitimate interests identified by Mr Roulston. Having done so, the Commissioner finds that the legitimate interests served by disclosure to Mr Roulston (and the wider public) outweigh the unwarranted prejudice that would be caused to the rights, freedoms or legitimate interests of the data subjects. In particular, the Commissioner considers there is a clear, legitimate public interest in ensuring transparency, accountability and public scrutiny of the use of public funds. The Commissioner is therefore satisfied that condition 6 of schedule 2 to the DPA can be met in this case.
64. Having reached this conclusion, the Commissioner has gone on to consider whether (as required by the first data protection principle) disclosure of the salary information of the data subjects would be fair and lawful.
65. The Commissioner considers that disclosure would be fair, for the reasons already outlined in relation to condition 6 above. Additionally, the Commissioner is unable to identify (having concluded that condition 6 of schedule 2 to the DPA can be met) any specific law forbidding disclosure.

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<sup>4</sup> For example, <https://glasgow.gov.uk/CHttpHandler.ashx?id=16462&p=0>

66. Having found disclosure of the salary information to be both fair and lawful, and in accordance with condition 6(1), the Commissioner therefore concludes that disclosure of this information would not breach the first data protection principle.
67. The Commissioner therefore concludes that the exemption in section 38(1)(b) has been wrongly applied by the Police to the withheld information relating to salaries as at 1 April 2013, and so they acted in breach of section 1(1) of FOISA by withholding this information.
68. The Commissioner requires the Police to disclose to Mr Roulston the salaries of ACCs as at 1 April 2013.

#### *Information on benefits*

69. The Commissioner accepts that most employees have a general expectation that information which, at least in part, relates to their private lives will not be disclosed into the public domain. In this case, the Commissioner accepts that the level of benefits received by an Officer partly depends on matters concerning their private lives. The Commissioner accepts that the disclosure of such information would be a significant intrusion into matters which the data subjects would reasonably expect to be kept private, even accepting the seniority of the positions occupied.
70. The Commissioner has weighed Mr Roulston's legitimate interests in the withheld information against the rights, freedoms and legitimate interests of the data subjects. As noted previously, there can be no presumption that the disclosure of personal data is in the public interest. The Commissioner must be satisfied that Mr Roulston's legitimate interests outweigh those of the data subjects before requiring disclosure.
71. Having considered the nature and content of the withheld information concerning benefits, the Commissioner has concluded that, on balance, disclosure would be disproportionately intrusive. She finds that disclosure would cause unwarranted prejudice to the rights, freedoms and legitimate interests of the data subjects. That being so, the Commissioner finds that condition 6 in Schedule 2 to the DPA is not met in relation to the information concerning benefits.
72. For the reasons given above, the Commissioner also finds that disclosure would be unfair. In addition, since the Commissioner has found that no condition in Schedule 2 can be met, she would consider disclosure to be unlawful. It therefore follows that disclosure of the personal data concerning benefits would breach the first data protection principle. Accordingly, the Commissioner accepts that this information is exempt from disclosure and the Police were entitled to withhold it under section 38(1)(b) of FOISA.

#### **Information not provided**

73. During the investigation, the Police indicated that they would normally disclose information concerning the types of vehicles used by senior officers, but were unsure as to whether information concerning cars provided for use by officers would fall within the scope of Mr Roulston's request, as these were not monetary benefits.
74. In the Commissioner's view, the information concerning cars would fall within the scope of Mr Roulston's request. The request did not specify that it related only to financial benefits. On the basis that the Police have not provided any specific submissions explaining why this information should be withheld, the Commissioner requires them to disclose the type of vehicles used by the relevant officers minus the registration mark. By failing initially to

disclose this information (to which no exemption was applied), the Commissioner finds that the Police breached section 1(1) of FOISA.

## Decision

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

The Commissioner finds that by failing to respond to all parts of Mr Roulston's request, the Police failed to comply with sections 1(1) and 10(1) of FOISA.

The Commissioner finds that the Police complied with section 21 of FOISA in responding to Mr Roulston's requirement for review.

The Commissioner finds that the Police were entitled to withhold some personal data which was exempt from disclosure under section 38(1)(b) of FOISA. However, she does not accept that some of the personal data was exempt from disclosure under section 38(1)(b) and requires the Police to disclose it to Mr Roulston.

The Commissioner finds that the Police failed to provide some information which they held and to which no exemption applied, and in doing so, failed to comply with section 1(1) of FOISA

The Commissioner therefore requires the Police to disclose the information described in paragraphs 68 and 74 by **2 October 2014**.

## Appeal

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Should either Mr Roulston 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.

## Enforcement

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

**Margaret Keyse**  
**Head of Enforcement**  
**18 August 2014**



## Appendix

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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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
  - (a) the provision does not confer absolute exemption; and
  - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
  - ...
  - (e) in subsection (1) of section 38 –
    - ...
    - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

#### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
  - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
  - (b) in a case where section 1(3) applies, the receipt by it of the further information.
- ...

#### 20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- ...
- (3) A requirement for review must-
  - ...

- (c) specify-
  - (i) the request for information to which the requirement for review relates; and
  - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

## **21 Review by Scottish public authority**

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
  - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
  - (b) substitute for any such decision a different decision; or
  - (c) reach a decision, where the complaint is that no decision had been reached.

...

## **38 Personal information**

- (1) Information is exempt information if it constitutes-

...

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

- (2) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles; or

...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

- (5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...



## **Data Protection Act 1998**

### **1 Basic interpretative provisions**

- (1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

## **Schedule 1 – The data protection principles**

### **Part I – The principles**

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

## **Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data**

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...

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