

# Decision Notice 184/2021

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## Alteration of Head of Complaints

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**Applicant: The Applicant**

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

**Case Ref: 202100192**



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked about the alteration of any head of complaint (HOC) form after the complainer had been interviewed and signed-off the HOC sheet. Police Scotland supplied some information, but stated that they did not hold a record of how many HOCs were altered. During the Commissioner's investigation, Police Scotland supplied the Applicant with the information.

The Commissioner found that Police Scotland interpreted the request correctly, but were not entitled to claim that they did not hold any information.

## Relevant statutory provisions

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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 Appendices form part of this decision.

## Background

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1. On 3 December 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information request was about complaints received by Police Scotland's West Lothian Command that were serious enough to be investigated by PSD [Professional Standards Department] in 2018/2019, 2019/2020 to date. (The request is set out in full in Appendix 2 of this decision.) Part 4 of the request was:  
*Please advise how many head of complaint [HOC] were altered after the complainer had been interviewed and signed of the HOC sheet? (after which the officer types the HOC sheet up, leaving it open to be abused).*
2. Police Scotland responded on 13 January 2021. They disclosed information to the Applicant about such complaints, but for Part 4 of the request they stated that they did not hold the information requested and refused the request in terms of section 17 of FOISA. Police Scotland explained in detail their complaint process and what was involved in the HOC and when it could legitimately be altered.
3. On same day, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that she was dissatisfied with the response to Part 4 of her request. The Applicant stated that Police Scotland did hold information relating to a civilian complaining about the HOC being changed and holding evidence of the full complaint not being investigated properly.
4. Police Scotland notified the Applicant of the outcome of their review on 12 February 2021. They apologised for failing to respond to the request within the statutory timescale, but maintained that they had correctly applied section 17 of FOISA to Part 4 of the request.
5. On 13 February 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of Police Scotland's review because she believed that information was held by Police Scotland.

## Investigation

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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. 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.
8. Police Scotland initially submitted that they did not hold a record of the number of HOCs altered for West Lothian Command, but on checking confirmed that information could be supplied to the Applicant that would satisfy Part 4 of her request. On 1 November 2021, Police Scotland provided the Applicant with information for Part 4 of her request on the number of HOCs that were altered for West Lothian Command. Police Scotland explained that a check had been carried out of the 16 complaints identified and that one file contained a scanned, handwritten and signed HOC form, which had been amended post signature to include additional allegations. Police Scotland confirmed that the complaint file contained a suitable audit trail of information confirming the legitimacy of these amendments. Police Scotland also explained why such changes can occur and the justification for them.
9. The Applicant confirmed to the investigating officer that she had received the revised information from Police Scotland but commented that:

*the request was not West Lothian, I already had that, it was force wide figures I asked for.*

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner considered all 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 – Notice that 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, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
12. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not usually require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in a recorded form (e.g. from a person's memory).
13. As noted above, on receiving a revised response from Police Scotland, the Applicant stated that she had asked for force wide figures, not just figures for West Lothian. The Applicant provided other comments that indicated her concerns.
14. The full text of the information request is set out in Appendix 2. The Commissioner believes that, given a reasonable interpretation, the request was seeking information about West Lothian, rather than for all of Police Scotland. As can be seen, the "background" section of the request refers to a series of complaints against West Lothian Command. The wording of

the requests begins with clear reference to West Lothian, and the link is continued in all six parts of the request.

15. The Commissioner finds that Police Scotland took a reasonable and justified interpretation of the Applicant's request. However, as information was identified and provided to the Applicant during the investigation, the Commissioner must find that Police Scotland were not entitled to notify the Applicant that information was not held in line with section 17(1) of FOISA.

## **Decision**

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The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) partially 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 Police Scotland interpreted the Applicant's request correctly but, by notifying her that they did not hold any information falling within the scope of request 4, Police Scotland breached section 1(1) of FOISA.

As Police Scotland disclosed the information held during the Commissioner's investigation, he does not require Police Scotland to take any action in respect of this failure in response to the Applicant's application.

## **Appeal**

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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**

**15 November 2021**

## Appendix 1: Relevant statutory provisions

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### 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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## Appendix 2: Full text of information request

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### Background

It is fact that when PSD arranged for a Police Inspector to investigate a series of complaints against the West Lothian Command, that a witness identified that the Inspector had changed the whole context of the Head of Complaints (HOC), ensuring that the investigation would ensure that no complaint was upheld. This type of professional misconduct and malfeasance is congruous with Dame Elish Angiolini's recent report of the horrific handling of Police Complaints System.

Per FOISA 2002 please advise me of the following information contained in your records:

1. The total amount of complaints received by Police Scotland West Lothian Command that were serious enough to be investigated by PSD in 2018/2019, 2019/2020 to date.
2. Please break these figures down month on month and week on week?
3. Please advise in total how many complainers there were against the number of complaints for each financial year?
4. Please advise how many head of complaint were altered after the complainer had been interviewed and signed of the HOC sheet? (after which the officer types the HOC sheet up, leaving it open to be abused).
5. How many Complaints were upheld for both periods?
6. How many were not upheld?

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