

Decision Notice 192/2021

Breaches of the UNDHR

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202100675



Scottish Information
Commissioner

Summary

Police Scotland were asked for longest time they had taken to respond to a complaint of a breach of the UNDHR. Police Scotland notified the Applicant, under section 17(1) of FOISA, that they did not hold the requested information. The Commissioner investigated and found that Police Scotland had complied with FOISA in responding to the request.

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 11 May 2021, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:

The longest time it has taken Police Scotland to respond to a Complaint on breach of UNDHR.
2. On 13 May 2021, Police Scotland asked the Applicant for clarification on what she meant by UNDHR, what time period she wanted the search to cover, and what she meant by the terms “complaint”, and “respond to”.
3. The Applicant responded on the same day, and confirmed that UNDHR stood for United Nations Declaration on Human Rights.
4. The following day, Police Scotland asked the Applicant to respond to the other points of clarification sought in its email of 13 May 2021.
5. The Applicant responded on 14 May 2021. She provided a time period for the searches, and confirmed that by complaint she meant “crimes reported”. No clarification for “respond to” was provided.
6. Police Scotland responded on 20 May 2021, and gave the Applicant notice, under section 17(1) of FOISA, that they did not hold the information she had requested.
7. On 21 May 2021, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that they had not provided her with the information she had requested.
8. Police Scotland notified the Applicant of the outcome of their review on 26 May 2021. They upheld their original response and maintained that they were right to give her notice, under section 17(1) of FOISA, that the information was not held.
9. On 27 May 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant indicated that she was dissatisfied with the outcome of Police Scotland’s review because the information she had requested had not been provided.

Investigation

10. 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.
11. On 8 June 2021, Police Scotland were notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
12. 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 their reasons for concluding that they did not hold the information requested by the Applicant.

Commissioner's analysis and findings

13. 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.

Information held by Police Scotland

14. The Commissioner's investigation is primarily to ascertain whether Police Scotland holds information falling within the scope of the Applicant's request.
15. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
16. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
17. The Applicant submitted that Police Scotland had not answered the question she had made and she had not been provided with the information she had requested.
18. Police Scotland noted that, while it is possible that a complainant will cite the UNDHR as their reason for reporting a crime, they would not proceed or respond on that basis and would deal with the report as any other report of crime. Police Scotland explained that, if someone complained that their rights under the UNDHR had been breached as they had been assaulted by someone, they would record a crime of minor or serious assault (depending on the circumstances of the incident), but they would not record a breach of the UNDHR on their system.
19. Police Scotland provided the Commissioner with a list of crime types and codes that they do record, and which are provided by the Scottish Government. They submitted that the crime types listed on the spreadsheet are the only crimes which are recorded by Police Scotland and which can be searched for.

20. Police Scotland explained that, as they can only search for crimes which are listed on the spreadsheet, they had not carried out any searches for the information requested by the Applicant.

The Commissioner's findings

21. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
22. The Applicant's request was for the longest time it had taken Police Scotland to respond to a crime reported under the UNDHR. Police Scotland have argued that they do not hold the information requested by the Applicant as they do not record breaches of the UNDHR. They have explained that, even if someone complained that their rights under the UNDHR had been breached as they had been a victim of crime, it is the specific crime that would be recorded and not the breach of the UNDHR. To support their arguments, Police Scotland provided the Commissioner with a spreadsheet which lists all of the crimes, and associated codes, they record on their systems (this spreadsheet is provided to Police Scotland by the Scottish Government). The Commissioner has carefully reviewed all of the crimes listed in this document, and he is satisfied that there is no mention of the UNDHR.
23. The Commissioner notes that Police Scotland have not conducted any searches for the information requested by the Applicant, but, as a breach of the UNDHR is not on the list of crimes recorded by Police Scotland, he accepts that searches were not required.
24. The Commissioner acknowledges the Applicant's disappointment that Police Scotland have not provided her with the information she has asked for, but they cannot disclose information which they do not hold, and for the reasons outlined above, the Commissioner is satisfied that the information requested by the Applicant is not held.
25. Accordingly, in the circumstances, the Commissioner is satisfied, on the balance of probabilities, that Police Scotland do not hold the requested information, and that they were right to give the Applicant notice, under section 17(1) of FOISA, that the information is not held.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland 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

7 December 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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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info