

Decision Notice

Decision 258/2014: Alison Mackenzie and Police Investigation and Complaints Commissioner

Complaint correspondence

Reference No: 201402247

Decision Date: 17 December 2014



Summary

On 17 May 2014, Ms Mackenzie asked the Police Investigations and Review Commissioner (PIRC) for correspondence relating to three complaints.

PIRC supplied Ms Mackenzie with information, subject to redaction of personal data.

The Commissioner investigated and found that, with the exception of the redacted personal data (which Ms Mackenzie did not require), PIRC had supplied Ms Mackenzie with all the relevant information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 17 May 2014, Ms Mackenzie made a request for information to PIRC. She asked for copies of all correspondence that had occurred between PIRC and the Police Service of Scotland (Police Scotland) in relation to three complaints she had submitted to PIRC.
2. PIRC responded on 30 May 2014. It supplied copies of the correspondence requested, subject to redaction on the basis that it was Ms Mackenzie's own personal data and the personal data of third parties. PIRC advised Ms Mackenzie on how she could access her own personal information in terms of the Data Protection Act 1998 (the DPA).
3. On 19 June 2014, Ms Mackenzie wrote to PIRC, requesting a review of its decision. She believed she was entitled to access her own personal information under FOISA. In addition, she did not accept that she had been provided with all of the information held by PIRC and falling within the scope of her request.
4. PIRC notified Ms Mackenzie of the outcome of its review on 2 July 2014. PIRC confirmed its reliance on sections 38(1)(a) and (b) to withhold information. It also stated that it had provided Ms Mackenzie with all of the information it held and which fell within the scope of her request.
5. On 15 September 2014, Ms Mackenzie wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Mackenzie stated she was dissatisfied with the outcome of PIRC's review because she believed she had not been provided with all of the information held by PIRC and falling within the scope of her request, referring specifically to "attachments" identified in the documents supplied to her.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms Mackenzie made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 18 September 2014, PIRC was notified in writing that Ms Mackenzie had made a valid application. PIRC was asked to send the Commissioner the information withheld from her. PIRC provided the information 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. PIRC was invited to comment on this application, with particular reference to the steps taken to identify and locate any relevant information it held.
9. In her application to the Commissioner, Ms Mackenzie stated that she was not satisfied she had been provided with all of the information falling within the scope of her request, specifically she made reference to “attachments” and “PDF” icons, which suggested information had not been provided to her. Ms Mackenzie did not query the application of section 38(1)(a) or (b) to the redactions made by PIRC, so the Commissioner is not required to consider the application of these exemptions.
10. During the investigation, Ms Mackenzie was provided with further information from Police Scotland, which led to further concerns that PIRC had not provided her with all of the information falling within the scope of her request.

Commissioner’s analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Ms Mackenzie and PIRC. She is satisfied that no matter of relevance has been overlooked.
12. Ms Mackenzie requested copies of all correspondence between PIRC and Police Scotland in relation to three separate complaints she had made against the Police. As indicated above, she was not satisfied that she had been provided with all the information held by PIRC and falling within the scope of her request. The Commissioner will consider Ms Mackenzie’s concerns in relation to attachments, and then those arising from the information disclosed by Police Scotland.

(i) Attachments and PDF icons

Attachments to documents C, D, E and F

13. In her application to the Commissioner, Ms Mackenzie stated that she had not been provided with various attachments to the disclosed correspondence. She referred specifically to emails containing “PDF icons”, suggesting that the relevant PDF documents had not been supplied. During the investigation, it was confirmed that the attachments to documents C, D, E and F had indeed been provided to Ms Mackenzie in response to her request. PIRC submitted that they had expected Ms Mackenzie would have been able to link the emails provided with the letters attached, using the date which formed part of the name of each pdf file. All of these documents were supplied to Ms Mackenzie in hard copy.

14. During the investigation, PIRC supplied Ms Mackenzie with another hard copy of each attachment, annotated with the appropriate references for ease of correlation between the covering email and the attachment.

Attachments to documents I and J

15. PIRC also identified attachments which were letters directly between Police Scotland and Ms Mackenzie. These letters were not provided to Ms Mackenzie by PIRC as it did not consider these to fall within the scope of her request. PIRC highlighted that these particular letters would already be in the possession of Ms Mackenzie.

Attachment to document K

16. Copy K is an email from Police Scotland's professional standards unit to PIRC, supplying PIRC with a copy of the complaint file. PIRC explained that the attachment, insofar as not supplied to Ms Mackenzie, would have consisted of correspondence between Police Scotland and Ms Mackenzie and therefore fell outwith the scope of her request.
17. The Commissioner accepts all of the above arguments as reasonable in the circumstances.

(ii) Information obtained from Police Scotland

18. During this investigation, Police Scotland, to whom Ms Mackenzie had submitted a request in the same terms, disclosed information to Ms Mackenzie. As a result of this disclosure, Ms Mackenzie argued that PIRC had not provided her with all of the information falling within the scope of her request. This request was considered by the Commissioner in *Decision 252/2014 Ms Alison MacKenzie and Police Services of Scotland*¹.
19. 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 relevant in this case.
20. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
21. PIRC submitted that it had searched all of its records and sources of information in order to provide the documents requested by Ms Mackenzie.
22. PIRC explained that it holds two types of file for each applicant, paper files and an electronic database file. The paper file consists of two separate folders for each case, one folder containing all documentation provide by the Police (to allow PIRC to review the Police's handling of the complaint) and another folder which contains direct correspondence between PIRC and the applicant. To fulfil Ms Mackenzie's request, PIRC explained, a search was completed of each of the two files, for each of the three case file references provided. In addition, a full search of each of the three database records was undertaken.
23. PIRC confirmed that the case review officer was also contacted to ensure that they did not hold any correspondence outwith the PIRC structure for case files. They confirmed that they held no other correspondence other than that contained within the database.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2014/201402283.aspx>

24. PIRC supplied the Commissioner with evidence of the searches it conducted to locate information falling within the scope of this request. PIRC also listed the 32 documents it had identified and supplied to Ms Mackenzie, consisting of 17 letters and 15 emails.
25. Ms Mackenzie made her request to Police Scotland on 17 June 2014, a month after the same request was submitted to PIRC. The Commissioner notes that a number of the documents supplied by Police Scotland (which she was able to view in the case leading to Decision 252/2014) postdate Ms Mackenzie's request to PIRC and consequently would not fall within the scope of the PIRC request. She also notes that duplicate copies of correspondence were also not supplied by PIRC to Ms Mackenzie, whereas Police Scotland supplied duplicates of the same information. A number of documents supplied by Police Scotland were internal correspondence within Police Scotland, which fell outside the scope of this request.
26. Given the explanations detailed above, and in light of the searches conducted by PIRC, the Commissioner is satisfied that PIRC supplied Ms Mackenzie with all of the information it held and which fell within the scope of her request, subject to the redaction of personal data.
27. Consequently the Commissioner is satisfied that PIRC complied fully with Part 1 of FOISA in responding to Ms Mackenzie's request.

Decision

The Commissioner finds that the Police Investigations and Review Commissioner complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Mackenzie.

Appeal

Should either Ms Mackenzie or the Police Investigations and Review Commissioner 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

17 December 2014

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.

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