

Decision Notice



Decision 281/2013 Mr Michael Roulston and the Chief Constable of the Police
Service of Scotland

Report on the costs of on call/standby allowances

Reference No: 201301035
Decision Date: 10 December 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

On 7 March 2013, Mr Roulston asked the Chief Constable of Central Scotland Police (the Police) for information contained in a report on the costs of on call/standby allowances. The Police responded by notifying Mr Roulston that they did not hold the requested information. This was accepted by the Commissioner following an investigation.

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 the Appendix to this decision. The Appendix forms part of this decision.

As stated in the summary, Mr Roulston's information request was made to the Chief Constable of Central Scotland Police. However, this decision has been issued in the name of the Chief Constable of the Police Service of Scotland (also, for the sake of convenience, described in this decision as "the Police") as the statutory successor to the Chief Constable of Central Scotland Police under the Police and Fire Reform (Scotland) Act 2012.

Background

1. On 7 March 2013, Mr Roulston asked the Police for a copy of a report submitted in or around October 2009 about the costs of on call/standby allowances. Mr Roulston explained that he believed the report to have been prepared by a certain individual (he provided a forename) and for it to have reached the desk of the Financial Director.
2. The Police responded on 10 April 2013, notifying Mr Roulston (in line with section 17(1) of FOISA) that they did not hold the report. The Police explained that the report was destroyed as it concerned a piece of work which had been concluded, so there was no need to retain it.
3. On 22 April 2013, Mr Roulston wrote to the Police requesting a review of their decision. He questioned the Police's assertion that they did not hold the report, suggesting that it should still be retrievable.



4. The Police notified Mr Roulston of the outcome of their review on 30 April 2013, upholding their original decision without modification.
5. On 30 April 2013, Mr Roulston wrote to the Commissioner's office, 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.
6. 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. The case was then allocated to an investigating officer.

Investigation

7. On 16 May 2013, the Police were notified in writing that an application had been received from Mr Roulston and were invited to provide comments on the application (as required by section 49(3)(a) of FOISA). Questions focused on the steps taken to identify and locate any relevant information held by the Police, together with details of when the piece of work the report related to was concluded. The Police were also asked to provide copies of relevant retention and disposal policies.
8. Further submissions were sought and obtained from both the Police and Mr Roulston during the investigation.

Commissioner's analysis and findings

9. 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 Mr Roulston and the Police. She is satisfied that no matter of relevance has been overlooked.

Section 17 – Information not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to qualifications which are not relevant here, that held at the time the request is received.
11. Under section 17(1) of FOISA, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.

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12. In his application, Mr Roulston commented that the Police's conclusion (that they did not hold the report) appeared to relate to a version of the report in hard copy. The response did not refer to any search of electronic records. He did not believe deletion of the electronic version would be consistent with the Police's own records retention policy. Mr Roulston also expressed surprise that the Police had not followed up his offer of further information on the authorship of the report.
13. During the investigation, Mr Roulston provided submissions to the Commissioner in which he identified individuals he considered to have been likely recipients of the report. Mr Roulston also explained that he believed the report would have been circulated electronically to members of the Force Policy Group (FPG), as well as being provided in hard copy.
14. The Police explained that, before responding to Mr Roulston's request, it carried out searches of both the home directories and email accounts of the author and recipient of the report, as identified by Mr Roulston. Searches were also carried out of the Force Executive shared folder using key words, which the Police identified to the Commissioner. Neither these searches, nor those carried out by relevant members of staff of their own home directories and email accounts, identified the report requested by Mr Roulston.
15. All FPG agendas, minutes and supporting papers from 2009 were also searched, the Police explained, without success. They also outlined the administrative process gone through in relation to retention of papers tabled at a FPG meeting, with the recollections of various relevant officers of how this particular report had been considered. The Police confirmed that a hard copy of all of these papers was maintained until January 2013, and that papers were also saved on the shared drive.
16. A housekeeping exercise involving the destruction of a number of hard copy files was undertaken in January 2013 in preparation for the move from Central Scotland Police to Police Scotland on 1 April 2013. The Police submitted that, during this exercise, many hard copy files were destroyed, including FPG papers which had been retained in the Executive Support Office, as it was considered electronic copies of these papers retained on the shared drive and intranet would suffice. The Police explained that it is possible the report of interest to Mr Roulston was missed during this housekeeping exercise. However, they consider it more likely (given that no reference was found to the report in either the agendas or minutes for the relevant period and given that recollections of staff present were that the content of the report was not formally discussed by the FPG) that it was not formally discussed by the FPG, and therefore never formally submitted. As a consequence, the Police concluded that it could not have been included in the master paper record or in the executive shared folder.
17. Force Executive destruction registers for the period 2009 to 2012 were examined by the Police for any reference to the report, but none was found. The Police acknowledged that the report should have been permanently retained in line with the ACPOS Retention Schedule, but acknowledged that it might have wrongly been considered a working paper and destroyed as such.

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18. During the investigation, the Police undertook to carry out searches of information held by the individuals identified by Mr Roulston as likely recipients of the report. The Police explained that certain of these individuals had retired; in accordance with Force procedures, their email accounts and home directories had been deleted.
19. Searches carried out of information held by individuals identified by Mr Roulston and still serving with Police Scotland led to the identification of a report dated 4 November 2009 which concerned on-call arrangements. A copy of this report was disclosed to Mr Roulston in full.
20. Following receipt of this report, Mr Roulston explained that this was not the report he was seeking. No other information was located in searches carried out during the investigation.
21. Evidence was also provided to the Commissioner of agreement being reached at national level in March 2011 regarding remuneration of police officers for on-call arrangements. This tends to support the contention of the Police that the piece of work to which the requested report related was concluded some considerable time before Mr Roulston's request for information.
22. Having considered the submissions from the Police and those from Mr Roulston, the Commissioner accepts that adequate, proportionate searches have been carried out by the Police, of places where the requested report should be held. The Commissioner is therefore satisfied, on the balance of probabilities, that no recorded information is (or was at the time of receiving Mr Roulston's request) held by the Police which would fulfil Mr Roulston's request. Consequently she finds that the Police were correct to notify Mr Roulston, in line with section 17(1) of FOISA, that they did not hold the requested information.

DECISION

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

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Appeal

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.

Margaret Keyse
Head of Enforcement
10 December 2013



Appendix

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.

...