



Scottish Information  
Commissioner

**Decision 226/2007 Mr Allan McLeod and the Chief Constable of  
Northern Constabulary**

*Request for names and ranks of police officers involved in a specific investigation*

**Applicant: Allan McLeod**

**Authority: Chief Constable of Northern Constabulary**

**Case No: 200701091**

**Decision Date: 6 December 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 226/2007 Allan McLeod and the Chief Constable of Northern Constabulary**

***Request for names and ranks of all police officers involved in a specific investigation, as well as those interviewed during an enquiry into the same investigation – section 12(1) of FOISA – Excessive Costs – upheld by the Commissioner***

### **Relevant Statutory Provisions and Other Sources**

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement) and 12(1) (Excessive cost of compliance)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations): regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

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

### **Facts**

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Mr Allan McLeod (Mr McLeod) requested the names and ranks of all police officers involved in the investigations into his nephew's death in 1997, and also the names and ranks of officers who were interviewed in a 2002 enquiry into the investigations, and who were involved in the 1997 investigations or the handling of complaints made by the McLeod family. The Chief Constable of Northern Constabulary (Northern Constabulary) responded by advising Mr McLeod that it considered the information exempt from disclosure in terms of sections 12(1) and 38(1)(b) of FOISA. Mr McLeod was not satisfied with this response and asked Northern Constabulary to review its decision. Northern Constabulary carried out a review and, as a result, notified Mr McLeod that it upheld its original decision. Mr McLeod remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Northern Constabulary had dealt with Mr McLeod's request for information in accordance with Part 1 of FOISA. In particular, he concluded that the cost of complying with Mr McLeod's request would exceed the prescribed limit of £600 set out in section 12(1) of FOISA. He did not require Northern Constabulary to take any action.



## Background

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1. On 4 June 2007, Mr McLeod wrote to Northern Constabulary requesting the following information:
  - *The names and ranks of every police officer who had a connection or involvement with the initial investigation into the death of his nephew in February 1997, and the second enquiry held in August 1997.*
  - *The names and ranks of every police officer interviewed by Chief Constable Andrew Cameron's team as part of the 2002 inquiry into the investigations, and who had a connection or involvement with the 1997 investigations and his family's complaints.*
2. On 28 June 2007, Northern Constabulary wrote to Mr McLeod in response to his request for information. It advised Mr McLeod that it considered the information exempt in terms of section 38(1)(b) of FOISA, in that it constituted the personal data of third parties. Northern Constabulary also advised Mr McLeod that the costs for providing him with the information he requested would exceed those specified in The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fee Regulations), and that therefore it also considered the information did not have to be provided in terms of section 12(1). In the same letter, Northern Constabulary provided Mr McLeod with the names and ranks of senior officers who were based at Wick Police Station at the time.
3. Mr McLeod wrote to Northern Constabulary on 2 July 2007, requesting a review of its decision to withhold information, as he believed that the information was not exempt from disclosure.
4. On 1 August 2007, Northern Constabulary wrote to notify Mr McLeod of the outcome of its review. Northern Constabulary argued that it still considered the information did not have to be provided in terms of sections 12(1) and that it was exempt under section 38(1)(b). It also now considered that the information was exempt in terms of section 26(a) of FOISA.
5. Mr McLeod wrote to my Office on 6 August 2007, stating that he was dissatisfied with the outcome of Northern Constabulary's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr McLeod had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



## The Investigation

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7. On 21 September 2007, Northern Constabulary was notified in writing that an application had been received from Mr McLeod and was invited to comment on the application in terms of section 49(3)(a) of FOISA. Northern Constabulary was also asked to provide my Office with detailed calculations estimating the projected cost of responding to Mr McLeod's request. In particular, Northern Constabulary was asked to include a breakdown of the cost of staff time, the type of work that was required to be undertaken to satisfy the request and the number of hours that compliance with the request was likely to take.
8. Northern Constabulary responded to this letter on 9 October 2007, providing a detailed explanation of the steps that would be required to identify and provide the information requested by Mr McLeod.
9. In later correspondence, Northern Constabulary was also asked to explain why it was able easily to provide Mr McLeod with the names of senior officers (in response to his request) but that it could not provide him with the names of junior officers without exceeding the prescribed limit for the purposes of section 12(1) of FOISA. Northern Constabulary explained that it had supplied Mr McLeod with the names of senior officers based at Wick Station (at the relevant time) as the information was easily accessible and was, in fact, already in the public domain. Northern Constabulary clarified that there may have been more senior officers involved in the case than those based at Wick Station, but in order to establish if this was the case, it would have to search through all of the documentation it held about this matter.
10. I will consider Northern Constabulary's submissions on what would be required in order to respond to Mr McLeod's request in my analysis and findings below.



## The Commissioner's Analysis and Findings

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11. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr McLeod and Northern Constabulary and I am satisfied that no matter of relevance has been overlooked.

### ***The information request***

12. Mr McLeod has requested :
- *The names and ranks of every police officer who had a connection or involvement with the initial investigation into the death of his nephew in February 1997, and the second enquiry held in August 1997.*
  - *The names and ranks of every police officer interviewed by Chief Constable Andrew Cameron's team as part of the 2002 inquiry into the investigations, and who had a connection or involvement with the 1997 investigations and his family's complaints.*

### **Section 12 - Excessive cost of compliance**

13. Section 12 of FOISA provides that a Scottish public authority need not comply with a request for information if the authority estimates that the cost of complying with the request will exceed the amount set out in the Fees Regulations (currently £600).
14. The projected costs that the public authority can take into account in relation to the request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it will incur in locating, retrieving and providing the information requested. The public authority may not charge for the cost of ascertaining whether it actually holds the information or whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.



*Names and rank of officers involved in the initial investigations*

15. Northern Constabulary has advised me that it cannot determine which officers had a connection with the 1997 investigations into the death of Mr McLeod's nephew without reading all of the files it holds in relation to the case. It has explained that the files relating to the case are stored on the Home Office Large Major Enquiry System (HOLMES) and consist of 5 different categories of information type. Specifically, Northern Constabulary has confirmed that HOMLES holds 383 Actions, 254 Statements, 26 Messages, 10 Personal descriptive forms, and 270 "Other" documents in relation to the initial investigation into the death of Mr McLeod's nephew. Northern Constabulary has provided the following explanation of what each 'information type' covers:
- Actions: an action is a written instruction which details an enquiry to be carried out and names the person raising the action and the officer(s) carrying out the action
  - Statements: witness statements which may contain officers' names within them, if mentioned by the witness, and will also have the name of the officer taking the statement at the end of each document. Statements can consist of many pages of A4.
  - Messages: are short pieces of text that usually consist of a few lines
  - Personal descriptive forms: contains details of a witness and the officer completing the form
  - Other Documents: consist of anything from a photocopy of a driving license to a club membership list.
16. Northern Constabulary submitted that as the sought information is of a sensitive nature, it would require a Grade 6 member of staff, with an hourly rate of £11.92 to read through all of the documents.
17. Northern Constabulary based their calculation on an assumption that it would take an average of 15 minutes to read each witness statement, and concluded subsequently that it would take 63.6 hours to read through all 254 statements, at a cost of £754.92.
18. Additionally, Northern Constabulary estimated that it would take an average of 5 minutes to read each of the 383 actions on the HOLMES system, and so concluded that in total it would take 31.9 hours at a cost of £380.45 to review each of these.
19. Northern Constabulary therefore concluded that, even excluding the remaining documentation stored on HOLMES (which it believed would only take a few hours to scan through), it would cost significantly more than £600 to provide Mr McLeod with the information he is seeking relating to the officers' involved with the 1997 investigations into the death of Mr McLeod's nephew.



*Names and rank of officers interviewed as part of the Inquiry*

20. Northern Constabulary has also confirmed that it holds 898 documents in relation to the Inquiry conducted by Chief Constable Cameron into the initial investigation into the death of Mr McLeod's nephew. Northern Constabulary has indicated that while some of the documents can be scanned very briefly in seconds, others are quite lengthy and could take anything from 15 to 25 minutes to read.
21. To address the differences in document size and type, Northern Constabulary has determined that it would take 15 minutes to read each of the 898 documents relating to the Inquiry by Chief Constable Cameron. Based on this, Northern Constabulary has contended that it would take 224.5 hours to read all of the Inquiry documents, at a cost of some £2676.04, which far exceeds the £600 cost limit set out in the Fees Regulations.
22. In total, Northern Constabulary has argued that fulfilling the two parts of Mr McLeod's request would cost £3,713.41.
23. I have considered the arguments and calculations submitted by Northern Constabulary in this case and it is my view that Northern Constabulary has correctly applied section 12 of FOISA when responding to Mr McLeod's request. I accept that the sensitivity of the case is such that a member of staff at Grade 6 would be required to access the information. In considering the scope of Mr McLeod's request, I also accept that the Grade 6 officer would be required to read all of the held files in order to identify the information requested by Mr McLeod. In addition, it is clear to me that even if the time for examination of each document were reduced to 5 minutes per item (which I would not regard as practicable) the costs incurred would still exceed £600 for each part of Mr McLeod's request.
24. I am therefore satisfied that the cost of supplying the information requested by Mr McLeod, on a reasonable estimate, would exceed £600. Consequently, I do not require Northern Constabulary to provide Mr McLeod with the information he requested.
25. As I have found that Northern Constabulary were correct to withhold the information requested by Mr McLeod under section 12(1) of FOISA, I will not go on to consider the application of the exemptions contained in section 38(1)(b) or 26(a) of FOISA.



## Decision

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I find that the Chief Constable of Northern Constabulary acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr McLeod's request for information, as the cost of complying with the request would exceed the cost prescribed in regulations made under section 12(1) of FOISA.

## Appeal

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Should either Mr McLeod or the Chief Constable of Northern Constabulary wish to appeal against this decision, there is an 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 notice.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

**Margaret Keyse**  
**Head of Investigations**  
**6 December 2007**





## 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.

##### 12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

#### The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

##### 3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs –
  - (a) no account shall be taken of costs incurred in determining –
    - (i) whether the authority holds the information specified in the request; or
    - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
  - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.



**5 Excessive cost – prescribed amount**

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.