

Decision Notice



Decision 107/2012 Mr James Duff and the Chief Constable of Dumfries and Galloway Constabulary

Letters to police from civil authorities

Reference No: 201200526
Decision Date: 29 June 2012

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Duff requested from the Chief Constable of Dumfries and Galloway Constabulary (Dumfries and Galloway Constabulary) “copies of the civil authorities’ letters to the police authorities not to conduct further investigative enquiry (into my complaints)”. Dumfries and Galloway Constabulary responded to the effect that they did not hold the information. Following a review, Mr Duff remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Dumfries and Galloway Constabulary had dealt with Mr Duff’s request for information in accordance with Part 1 of FOISA, by giving notice that they did not hold any information falling within the scope of Mr Duff’s request. She did not require Dumfries and Galloway Constabulary to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17 (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.

Background

1. On 19 January 2012, Mr Duff wrote to Dumfries and Galloway Constabulary, requesting information including:
“Copies of the civil authorities’ letters to the police authorities not to conduct further investigative enquiry (into my complaints).”
2. Dumfries and Galloway Constabulary responded on 21 February 2012. They stated that Mr Duff had previously requested this information and been advised that they held no specific information in relation to the “civil authorities”. Accordingly, Dumfries and Galloway Constabulary again relied on section 17 of FOISA in advising Mr Duff that the information he requested was not held.



3. Neither the request nor the response by Dumfries and Galloway Constabulary specified the identities of the “civil authorities” in question.
4. On 22 February 2012, Mr Duff wrote to Dumfries and Galloway Constabulary, requesting a review of their decision.
5. Dumfries and Galloway Constabulary notified Mr Duff of the outcome of their review on 12 March 2012. They apologised to Mr Duff for the delay in responding to his request, but upheld their original decision that they did not hold the information.
6. On 15 March 2012, Mr Duff wrote to the Commissioner, stating that he was dissatisfied with the outcome of Dumfries and Galloway Constabulary’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Duff had made a request for information to a Scottish public authority and had 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

8. The investigating officer contacted Dumfries and Galloway Constabulary, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Dumfries and Galloway Constabulary were asked to detail the searches they carried out to determine that they held no information falling within the scope of Mr Duff’s request.
9. The relevant submissions received from both Dumfries and Galloway Constabulary and Mr Duff will be considered fully in the Commissioner’s analysis and findings below.

Commissioner’s analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all the submissions made to her by both Mr Duff and Dumfries and Galloway Constabulary and is satisfied that no matter of relevance has been overlooked.

Section 17 of FOISA – Notice that information is not held

11. 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 limited provisions which are not relevant here, that held at the time the request is received.

Decision 107/2012
Mr James Duff
and the Chief Constable of Dumfries and Galloway Constabulary



12. Section 17(1) of FOISA requires that, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
13. In his application to the Commissioner, Mr Duff refused to accept that Dumfries and Galloway Constabulary held no information. Mr Duff noted certain references to “civil authorities” in police reports obtained from Dumfries and Galloway Constabulary and explained that he was seeking evidence to substantiate statements in these reports: he provided copies of the reports.
14. Responding to the Commissioner’s investigation, Dumfries and Galloway Constabulary advised that no searches were carried out in response to Mr Duff’s request of 19 January 2012. They explained that this was because comprehensive searches were undertaken in response to an earlier request (in the case referred to in paragraph 2 above, which had embraced the subject matter of this present request). In these earlier searches, Dumfries and Galloway Constabulary concluded that no reference to “civil authorities” could be found, other than references in the reports identified by Mr Duff in his application.
15. Dumfries and Galloway Constabulary referred to a decision of the previous Commissioner (*Decision 026/2007*¹), which accepted in that case that the requested information was not held. They acknowledged that the previous request was for the names of the “civil authorities” referred to, rather than any correspondence from them, but pointed out that the (then) Commissioner was satisfied that Dumfries and Galloway Constabulary held no information which would identify the “civil authorities” in question. It followed, therefore, that no actual letters from these authorities were held.
16. Basically, the Commissioner accepts that the terms of the request considered in *Decision 026/2007* are as described in the previous paragraph. She also accepts as sound the argument that any adequate searches for the names of the authorities in question should have identified any relevant correspondence from those authorities held by Dumfries and Galloway Constabulary.
17. There might well be circumstances in which the Commissioner would require additional searches to be carried out for information of the kind requested in this case, even if comprehensive searches had been carried out in response to a similar request for information some years earlier. The Commissioner does not believe this to be such a case. The police reports referred to by Mr Duff all date from a considerable time before the request dealt with in *Decision 026/2007*. They relate to events going back over a number of years. There is nothing to suggest that the relevant circumstances should have changed in any way since the earlier searches were carried out.

¹ http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600820_200600830.asp

Decision 107/2012
Mr James Duff
and the Chief Constable of Dumfries and Galloway Constabulary



18. While acknowledging that there is always the risk that a previous search might have missed something, in this case the Commissioner is not satisfied that it would be reasonable to interpret the references to “civil authorities” in the police reports as raising any expectation that Dumfries and Galloway *should* hold the information Mr Duff is seeking. On the contrary, the references appear to suggest that certain matters were *not* reported to the police for further investigation, rather than that correspondence was sent which might have had an effect on an ongoing investigation.
19. There might also be circumstances in which the Commissioner would, to facilitate an adequate search, expect a Scottish public authority receiving a request such as this to ask the applicant what he meant by “civil authorities”. Given all the circumstances described above, the Commissioner does not believe such an approach to have been necessary here. In any event, the term is not defined further in the reports where it appears and there would appear to be no viable means of ascertaining the author’s intentions at this remove from their preparation.
20. In all the circumstances, therefore, the Commissioner accepts that it was reasonable for Dumfries and Galloway Constabulary to conclude that they did not hold any information which fell within the scope of Mr Duff’s request. She is therefore satisfied that Dumfries and Galloway Constabulary were correct to give Mr Duff notice, in terms of section 17(1) of FOISA, that they held no such information.

DECISION

The Commissioner finds that the Chief Constable of Dumfries and Galloway Constabulary complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Duff.

Appeal

Should either Mr Duff or the Chief Constable of Dumfries and Galloway 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.

Margaret Keyse
Head of Enforcement
29 June 2012



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.

...