

Decision Notice

Decision 200/2016: Mr Mark McLaughlin and the Scottish Police Authority

Revenue budget overspend

Reference No: 201502279

Decision Date: 20 September 2016



Summary

On 29 October 2015, Mr McLaughlin asked the Scottish Police Authority (the SPA) for information concerning the forecast overspend in the Police Scotland revenue budget.

The SPA withheld the information under various exemptions in FOISA.

The Commissioner found that the SPA had failed to identify and locate all of the information it held and which fell within the scope of Mr McLaughlin's request. She required the SPA to conduct further searches to satisfy her that it had located and retrieved all the relevant information that it held. The Commissioner required the SPA to disclose this information to Mr McLaughlin or provide an adequate refusal notice in terms of section 16 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 16 (refusal of request)

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 29 October 2015, Mr McLaughlin made a request for information to the SPA. The information requested concerned the forecast revenue budget overspend noted within the Police Scotland Finance Report to the SPA dated 30 September 2015¹. Mr McLaughlin requested all reports and correspondence between Police Scotland, the Scottish Government and the SPA about potential options for managing the overspend since 1 January 2014.
2. The SPA responded on 20 November 2015. The SPA withheld the information requested on the basis that it was exempt from disclosure in terms of section 30(b) and (c) of FOISA.
3. On 20 November 2015, Mr McLaughlin wrote to the SPA requiring a review of its decision. He disagreed that the information was exempt from disclosure and considered the public interest favoured disclosing the information.
4. The SPA notified Mr McLaughlin of the outcome of its review on 3 December 2015. The SPA upheld its original decision without modification.
5. On 3 December 2015, Mr McLaughlin wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr McLaughlin stated he was dissatisfied with the outcome of the SPA's review because he did not agree that the information requested was exempt from disclosure and considered there was a strong public interest in its disclosure.

¹ <http://www.spa.police.uk/assets/126884/310253/310767>

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr McLaughlin 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 23 December 2015, the SPA was notified in writing that Mr McLaughlin had made a valid application. The SPA was asked to send the Commissioner the information withheld from Mr McLaughlin. In response, the SPA provided some information, indicating that this was the information it held which fell within the scope of Mr McLaughlin's request. 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. The SPA was invited to comment on this application and answer specific questions. These included questions on the steps taken to identify, locate and retrieve all the relevant information it held.
9. The SPA provided submissions explaining that the information requested was being withheld under the exemptions in section 30(b)(i), 30(b)(ii) and 30(c) of FOISA. It provided its reasons for applying these exemptions. The SPA also explained the searches it had undertaken for the information.
10. The investigating officer then asked the SPA to provide additional information which it appeared to hold (it was referred to in the information provided) and which it appeared might fall within the scope of Mr McLaughlin's request. The SPA provided this additional information.
11. The Commissioner subsequently started an investigation into an application from Mr McLaughlin involving an identical request for information made to Police Scotland. In the course of that investigation, Police Scotland provided the Commissioner with the information that they held and which they considered fell within the scope of Mr McLaughlin's request.
12. It was apparent that Police Scotland had supplied considerably more information than the SPA and, that the information supplied by Police Scotland was likely also to be held by the SPA. Consequently, the SPA was asked to carry out additional searches in order to identify, locate and retrieve all of the information it held and which fell within the scope of Mr McLaughlin's request.
13. The SPA subsequently provided a considerable volume of information beyond that previously supplied, which it considered fell within the scope of Mr McLaughlin's request. All of this was withheld under the exemptions referred to above.

Commissioner's analysis and findings

14. 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 McLaughlin and the SPA. She is satisfied that no matter of relevance has been overlooked.

Information held by the SPA

15. As in any case where an application is made to the Commissioner, she must satisfy herself that adequate steps have been taken by the authority to identify and locate all of the information that it holds which falls within the scope of the request. What is adequate in any

given case will depend on the circumstances of the request. She must assure herself also that all information which the authority considers to fall within the scope of the request is actually relevant to the request.

16. As noted above, in response to the Commissioner's initial request for the information it had withheld from Mr McLaughlin, the SPA provided only a limited quantity of information. The SPA subsequently provided additional information at different points during the investigation.
17. The Commissioner notes the piecemeal manner in which information has been provided to her, and the fact that additional information continued to be provided by the SPA during the investigation.
18. In this case, the Commissioner is not satisfied that the SPA has taken adequate steps to satisfy her that it holds no further relevant information. Furthermore, she is not satisfied that all of the information supplied to her previously by the SPA actually falls within the scope of Mr McLaughlin's request.
19. The Commissioner has considered the information that was provided to her by Police Scotland (in relation to Mr McLaughlin's identical information request and application for a decision). Notwithstanding the additional information the SPA provided during the investigation, there remains different information provided to her by Police Scotland that has not been provided by the SPA. Having considered the nature of this information, the Commissioner considers it implausible that it is not held by the SPA in its own right.
20. In the circumstances, the Commissioner is not satisfied that the SPA could have provided Mr McLaughlin with accurate or adequate responses to his request for information and requirement for review. At the time of those responses, the SPA had not identified what relevant information it held. Consequently, it was not fully aware of the nature of that information, whether any of the information was already in the public domain and whether all of it could be withheld properly under FOISA.
21. The Commissioner now requires the SPA to undertake further searches to satisfy itself – and her – that all relevant information falling within the scope of Mr McLaughlin's request has been identified, located and retrieved. Once all information falling within the scope of Mr McLaughlin's request has been identified, the Commissioner requires that the information be disclosed to Mr McLaughlin or that an appropriate refusal notice be given in terms of section 16 of FOISA.

Decision

The Commissioner finds that the Scottish Police Authority (the SPA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McLaughlin. The Commissioner has not been provided with sufficient evidence to be satisfied that the SPA has conducted adequate searches to identify and locate all the information it holds and which falls within the scope of this request.

The Commissioner therefore requires the SPA to conduct adequate searches for the information requested by Mr McLaughlin, and disclose that information or give Mr McLaughlin an appropriate refusal notice in accordance with Part 1 of FOISA, by **4 November 2016**.

Appeal

Should either Mr McLaughlin or the Scottish Police Authority 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.

Enforcement

If the Scottish Police Authority (the SPA) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SPA has failed to comply. The Court has the right to inquire into the matter and may deal with the SPA as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

20 September 2016

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.

...

(6) This section is subject to sections 2, 9, 12 and 14.

16 Refusal of request

(1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-

(a) discloses that it holds the information;

(b) states that it so claims;

(c) specifies the exemption in question; and

(d) states (if not otherwise apparent) why the exemption applies.

(2) Where the authority's claim is made only by virtue of a provision of Part 2 which does not confer absolute exemption, the notice must state the authority's reason for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.

(3) The authority is not obliged to make a statement under subsection (1)(d) in so far as the statement would disclose information which would itself be exempt information.

(4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.

(5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if-

(a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and

(b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.

(6) Subsections (1), (4) and (5) are subject to section 19.

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