

# Decision Notice

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## **Decision 017/2017: The Applicant and the Chief Constable of the Police Service of Scotland**

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### **Complaints against the police alleging anti-Catholicism**

Reference No: 201602232

Decision Date: 7 February 2017



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked for the number of complaints making allegations of anti-Catholicism which they had received from members of the public, their own employees or any regulatory agency. Police Scotland refused the request on grounds of excessive cost. They also found that part of the request was not for recorded information.

The Commissioner found that the cost of complying with the request would not have been excessive. As Police Scotland have now disclosed information, she did not require them to take any action.

She agreed with Police Scotland that part of the request was not a request for recorded information and they were not required to respond to it. She also accepted that Police Scotland was not required to respond to part of the request, because they had asked for clarification from the applicant and had not received it.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3), (4) and (6) (General entitlement); 8(1)(c) (Requesting information); 12(1) (Excessive cost of compliance); 73 (Interpretation (“information”))

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 the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 31 October 2016, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The Applicant asked for “a statistical count that would show the number of complaints raised against the police ... that allege anti-Catholicism” between 30 October 2014 and 31 October 2016, from:
  - (a) members of the public
  - (b) Police Scotland’s employees
  - (c) any regulatory agency.
2. Police Scotland responded on 6 November 2016. Police Scotland refused to comply with parts (a) and (b) of the request as to do so would incur costs of more than £600, and therefore they were not obliged to comply with the request (section 12 of FOISA). They provided some explanation of the costs involved. For request (c), Police Scotland sought clarification of what was meant by “regulatory agency”.
3. On 14 November 2016, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that they wished Police Scotland to verify if their responses to (a), (b) and (c) were correct. The Applicant also asked them to comment on their responses.

4. Police Scotland notified the Applicant of the outcome of their review on 25 November 2016. They upheld their decision that they could not respond to requests (a) and (b) as the cost of providing the information would exceed the statutory limit of £600. For request (c), they reiterated that they were unable to respond without clarification of what was meant by “regulatory agency.” Police Scotland refused to provide the comment which the Applicant had asked for, explaining that this was not recorded information covered by FOISA.
5. On 3 December 2016, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. the Applicant asked the Commissioner to establish whether Police Scotland’s review response was “correct”.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and answer specific questions including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.
8. During the investigation Police Scotland provided the Applicant with information covered by parts (a) and (b) of the request. They explained that they had re-examined the matter and apologised that the information had not been previously located and provided.
9. The Applicant confirmed on 31 January 2017 that they still required a decision to be issued by the Commissioner.

## **Commissioner’s analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both the Applicant and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

### **Matters to be considered**

11. In relation to part (c) of the request, Police Scotland sought clarification of what the Applicant meant by “regulatory agency”. Section 1(3) provides that a Scottish public authority is not obliged to respond to an information request if it requires further information in order to identify and locate the information an applicant has requested, and has told the applicant so (specifying what further information is needed). A public authority is only entitled to seek such clarification if the requirement for further information is reasonable.
12. Police Scotland sought clarification, but did not receive clarification from the Applicant on what was meant by “regulatory agency”.
13. For a request to be valid, it must describe the information requested (section 8(1)(c) of FOISA). The phrase “regulatory agency” is wide and it is not clear which bodies the Applicant was referring to. The Commissioner therefore accepts that it was reasonable for Police Scotland to require clarification before responding to part (c) of the request and that, in the absence of any such clarification, Police Scotland were not required to respond.

14. The Commissioner will now go onto consider if Police Scotland complied with its legal obligations under FOISA in responding to parts (a) and (b) of the Applicant's request.

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

15. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. In terms of regulation 5 of the Fees Regulations, this is £600. Consequently, the Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request exceeds this amount. If section 12(1) applies, there is no provision for taking account of any public interest considerations which may be relevant.
16. During the Commissioner's investigation, Police Scotland provided the Applicant with information for parts (a) and (b) of the request. Police Scotland also apologised and explained that, having re-considered their records management system, they were able to supply the statistics.
17. In these circumstances, the Commissioner finds that Police Scotland were incorrect to rely on section 12(1) of FOISA to refuse to comply with requests (a) and (b) on the ground that to do so would exceed the statutory maximum of £600.

## **Information held by Police Scotland**

18. The Applicant has questioned whether the information provided by Police Scotland is correct, expecting the numbers to be higher.
19. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
20. Police Scotland explained to the Commissioner how they had obtained the information disclosed to the Applicant. Complaints received about Police Scotland are recorded and categorised on a system used by its Professional Standards Department (PSD). Police Scotland explained how they were able to retrieve the information covered by parts (a) and (b) of the request by using the categories and subcategories within this system.
21. The Commissioner is satisfied that Police Scotland have now taken reasonable and proportionate steps to identify and locate the information covered by parts (a) and (b) of the Applicant's request. She accepts Police Scotland's explanations of how they located the information and finds that it is reasonable to conclude that they do not hold any further information falling within the scope of parts (a) and (b) of the request. An earlier decision of the Commissioner (*Decision 188/2016*<sup>11</sup>) provides a more detailed description of the complaints recording system used by Police Scotland. The Commissioner has no reason to suspect that the searches by Police Scotland in relation to the current request were incomplete or inadequate.
22. Having considered all the relevant submissions, the Commissioner accepts that Police Scotland have taken adequate and proportionate steps to establish the information they held which fell within the scope of the Applicant's request. On the balance of probabilities, she

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<sup>11</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2016/201600643.aspx>

accepts that the Applicant has now been provided with all of the information held by Police Scotland which falls within the scope of parts (a) and (b) of the request.

23. The Commissioner cannot comment on the accuracy of any recorded information an authority holds.
24. In the request for review, the Applicant asked Police Scotland to comment on the information covered by the request. Police Scotland advised that they were only required to consider recorded information under FOISA. The Commissioner upholds this response. Section 73 of FOISA defines "information" as "information recorded in any form" (subject to conditions that are not relevant here). The Commissioner accepts that Police Scotland were not required to provide an opinion or otherwise comment along the lines requested by the Applicant.

## Decision

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The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply in full with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Police Scotland were not entitled to rely on section 12(1) of FOISA, because the cost of providing the information it held was less than £600. Given that Police Scotland have disclosed the information to the Applicant, the Commissioner does not require Police Scotland to take any action in response to this failure.

Police Scotland were entitled to refuse to comply with a request for which clarification had been sought but not received, in terms of section 1(3) of FOISA.

The Commissioner accepts that Police Scotland was not required to consider part of the request which did not seek recorded information.

## Appeal

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Should either the Applicant or Police 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**

**7 February 2017**

### 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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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.

...

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

#### 8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...

#### 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.

...

## 73 Interpretation

In this Act, unless the context requires a different interpretation—

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

...

## 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.

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