

Decision Notice 060/2021

Minutes for meetings of the former Northern Joint Police Board

Applicant: The Applicant

Public authority: Scottish Police Authority

Case Ref: 202100074



Scottish Information
Commissioner

Summary

The SPA was asked for the minutes for all meetings of the former Northern Joint Police Board in 2002, 2003, 2007 and 2008. SPA stated that they did not hold the requested information.

The Commissioner found that the SPA had partially complied with FOISA in responding to the request. While the Commissioner accepted that the SPA did not hold the information requested, he found that it had failed to respond on time and that the SPA's refusal should have assisted the Applicant more.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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 8 October 2020, the Applicant made an information request to the Scottish Police Authority (SPA) for copies of the minutes for all meetings of the former Northern Joint Police Board (NJPB) in 2002, 2003, 2007, and 2008.
2. Having received no response, the Applicant wrote to the SPA on 16 November 2020, requesting a review of its decision on the basis that the SPA had failed to respond to his request.
3. The SPA failed to respond to the Applicant's requirement for review.
4. Following an appeal made to the Commissioner, the SPA notified the Applicant of the outcome of its review on 12 January 2021. The SPA acknowledged that it had failed to respond to the request for a review, and apologised. The SPA stated that it did not hold the information requested and refused the request under section 17 of FOISA.
5. On 17 January 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of SPA's review because he did not believe that the SPA did not hold the information he had requested. He also expressed dissatisfaction with the failure to respond on time and with the level of advice and assistance given to him.

Investigation

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 him 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. The SPA was invited to comment on this application and to answer specific questions. These related to how the SPA had established that it held no information falling within the request.

Commissioner's analysis and findings

8. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the Applicant and the SPA.

Section 17(1) - Notice that information is not held

9. 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. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

10. The SPA gave the Applicant notice in terms of section 17 of FOISA that it did not hold the information requested. The Applicant was dissatisfied with this refusal as he believed the information was held by the SPA. To evidence his case, the Applicant referred to a previous decision by the Commissioner, *Decision 111/2020*¹, which was issued on 29 September 2020. This decision related to an identical request made to the Chief Constable of the Police Service of Scotland (Police Scotland). The Applicant referred to paragraph 18 of that decision where it is stated:

In this case, Police Scotland explained why they did not hold the information [of the minutes for all meetings of the former Northern Joint Police Board (NJPB) in 2002, 2003, 2007, and 2008] and told the Applicant which Scottish public authority did - the SPA. Police Scotland provided a web address for the SPA to the Applicant, which would allow him to make a request to the SPA for the information. Additionally, Police Scotland's FOI team actually checked with SPA and the SPA confirmed to Police Scotland that the records were held by them.

11. The question for the Commissioner is whether the SPA complied with FOISA in refusing the request on the ground that it did not hold, at the time of the request, the recorded information that fell within the Applicant's request. The SPA was therefore asked to explain how it had satisfied themselves that it held no information that fell within the Applicant's request, and also to comment on the point made by the Applicant with respect to *Decision 111/2020*.
12. The SPA explained that the documentation requested related to information held by a legacy public body (i.e. the NJPB) which predated the establishment of the SPA in 2013. The SPA confirmed that it held at the date of the request – and still holds - an electronic file log relating to hard copies of documentation received by the SPA from the NJPB on 19 November 2014. The SPA supplied this electronic file log to the Commissioner. This log details that legacy papers transferred to the SPA on this date and among those files were hard copies of papers relating to NJPB Board meetings between 1995 and 2013. The documents were logged and stored in the SPA's archive room at Pacific Quay, Glasgow.
13. In February 2019, a security incident was identified by the SPA's Information Management team and reported to the SPA's Chief Executive. This incident related to hard copies of information stored within the SPA's archive room at Pacific Quay which had been accidentally destroyed during "a weeding exercise in the preceding two weeks". A physical check of the archive room confirmed that records, including those transferred from NJPB in November 2014, were among those that had been shredded and were beyond retrieval. No

¹ [Decision 111/2020 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

electronic copies of files were provided by NJPB and, therefore, no electronic searches for the information requested were undertaken.

14. In respect of the points in *Decision 111/2020*, which at paragraph 18 suggest that the SPA did and does hold the relevant information, the SPA said that it had reviewed its own records and the Information Management team have no note of or correspondence with Police Scotland in terms of the existence of the records in question. The SPA said that
“In the event that Police Scotland asked a general question, such as ‘did records relating to legacy joint boards transfer to the Authority’, as opposed to ‘do you hold them’, we would have confirmed this.”
15. The SPA concluded that it regrets that the information requested by the Applicant is not held, as a result of having been destroyed in error. The SPA explained that the incident in question has been investigated and actions taken to mitigate this from happening again. Had the SPA been in possession of the records requested, it said it would have fulfilled the request, subject to relevant exemptions.
16. The SPA evidenced to the Commissioner that it had searched for the requested information but had not located it. A search of the SPA network was commissioned to pull back all “Joint Police Board” documents, as some of the documents had been added electronically in response to requests for information in SPA’s early days. The SPA had received information requests in respects of Joint Police Boards and some documents relevant to the requests were scanned to the network. For this application, the SPA checked the FOI logs to see if there were any relevant requests. The SPA then ran searches on the entire SPA domain with the keyword searches “Highland”, “Inverness” and “Joint Police Board”. The SPA evidenced these searches to the Commissioner. No relevant documents were recovered.
17. The SPA also confirmed that all the remaining boxes, i.e. those that had not been destroyed, had their contents checked and no information relevant to the Applicant’s request was found. Again, the SPA evidenced the information still held in respect of the index for the relevant information from the Highland box.
18. The SPA was asked to clarify its contact with the previous holders of the information. The SPA contacted Highland Council which advised that it did not hold any records, but suggested contacting their archive provider. The SPA contacted the archive provider, who confirmed that it held no relevant information for the time period in question. Again, this was fully evidenced to the Commissioner.
19. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
20. Having considered all the relevant submissions, the Commissioner accepts that the SPA does not hold the information requested. He is satisfied that the SPA has now taken adequate and proportionate steps to establish the information it held which fell within the scope of the Applicant’s request.
21. In reaching this conclusion, the Commissioner has taken account of the evidence supplied to him that confirms that the information was transferred to the SPA, but, due to a records management error, this information is no longer held.

Section 15 - Advice and Assistance

22. The Applicant was also dissatisfied as he did not believe that the SPA had provided to him any assistance in terms of what other agency or agencies he could obtain the recorded information.
23. Section 15 provides that a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
24. In this case, the SPA replied to the Commissioner that it was committed to meeting its responsibilities in terms of its duty to assist. To that end, on 11 January 2021, the SPA's Information Management Team contacted Highland Council who advised that High Life Highland may hold archive papers for Highland Council. Contact was made with High Life Highland on the same day to ascertain if it had any relevant papers. On 18 January 2021, the SPA received confirmation that no information relevant to the request was held. Consequently, the SPA believed that all avenues to assist with the retrieval of the documents have been exhausted.
25. In the circumstances, the Commissioner notes that the SPA made attempts to ascertain if the relevant information was held by other organisation – most notably by Highland Council, itself a Scottish public authority and therefore subject to FOISA. The SPA has also evidenced the action it has taken to establish exactly what information was held by it that was relevant to the request – some of these actions were more related to assessing which information a still held, following the accidental destruction.
26. In terms of section 15, the Commissioner is of the view that it would be reasonable to expect the SPA to have assisted the Applicant more in the circumstances. Whilst the SPA could not have advised the Applicant that another Scottish public authority held the information, the SPA could have been clearer to the Applicant why the information was not held by it at the time the request was received.
27. The Commissioner concludes that the SPA failed to provide reasonable advice and assistance to the Applicant and therefore failed to comply fully with section 15 of FOISA. The Commissioner accepts that the submissions given to him by the SPA, and inasmuch as they are now known by the Applicant through this decision, are such that there is no need to require the SPA to advise the Applicant further in terms of section 15 in respect of his request.

Timescales

28. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
29. The SPA apologised for the delay, explaining that the request had not been forwarded to its Freedom of Information Mailbox in accordance with its internal procedures, which meant that it was not formally recorded or monitored to ensure it was responded to on time. The SPA advised the Applicant that the process for managing requests is under review. Part of the review will include additional training for staff to ensure they are aware of the correct process for managing requests.

30. It is a matter of fact that the Council [SPA] failed to respond to the Applicant's requirement for review in the time allowed. The Commissioner therefore finds that the Council [SPA] failed to comply with section 21(1) of FOISA.

Decision

The Commissioner finds that the Scottish Police Authority (SPA) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The SPA was correct to notify the Applicant that it did not hold the requested information at the time of the Applicant's request but, in the circumstances, should have given him more assistance in terms of section 15 of FOISA.

Given that this decision makes clear why the SPA did not hold the requested information, the Commissioner does not require the SPA to take any action in respect of this failure in response to this application.

The Commissioner also finds that the SPA failed to respond to the Applicant's requirement for review within the time allowed by section 21(1) of FOISA. In the circumstances, the Commissioner does not require to take any action in relation to this failure in relation to this application.

Appeal

Should either the Applicant or the SPA 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

29 April 2021

Appendix 1: 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.
- ...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- ...

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.
- ...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly, and in any event by not later than the twentieth working day after receipt by it of the requirement.
- ...

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