

# Decision Notice 143/2021

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## **Zircon Affair - BBC Scotland raid by Strathclyde Police**

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**Applicant: The Applicant**

**Public authority: Chief Constable of the Police Service of  
Scotland**

**Case Ref: 202001567**



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked for information held on the Zircon Affair – BBC Scotland raid by Strathclyde Police.

Police Scotland considered that it would cost well in excess of £600 to provide the information sought, so they were not obliged to comply with the request. The Commissioner agreed.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance)

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. By way of explanation, according to the BBC<sup>1</sup>, the “Zircon Affair” in 1986 and 1987 related to an investigative programme made by a freelance reporter working with BBC Scotland, looking into the Zircon signals intelligence satellite project. A weekend raid of the BBC’s premises in Glasgow was undertaken by Strathclyde Police and the National Controller for Scotland, Pat Chalmers, was questioned. Papers and footage were impounded and the journalist’s home was searched. The Zircon programme was eventually shown two years later.
2. On 29 October 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:  
“... any information you hold on the Zircon Affair and the raid of BBC Scotland.”
3. Police Scotland responded on 27 November 2020, refusing the request in terms of section 12(1) of FOISA and explaining why they believed the costs of fulfilling this request would exceed the £600 limit set for the purposes of section 12(1).
4. On 27 November 2020, the Applicant wrote to Police Scotland, requesting a review of their decision. In a subsequent email (2 December 2020), the Applicant explained that he believed there was a high public interest in the information being published, overriding any qualified exemptions.
5. Police Scotland notified the Applicant of the outcome of their review on 31 December 2020, upholding the application of section 12(1) of FOISA with a more detailed explanation of the estimated costs.
6. On 31 December 2020, 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

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<sup>1</sup> [The Zircon Affair - 1986-7 - History of the BBC](#)

of Police Scotland's review because the public interest in disclosing this information was so high.

## Investigation

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7. 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.
8. On 28 January 2021, Police Scotland were notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
9. 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 to answer specific questions. These related how they had estimated the costs involved in supplying the information described in the Applicant's request.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.
11. In his requirement for review and subsequent application, the Applicant's dissatisfaction commented on the public interest when disputing Police Scotland's application of section 12(1) of FOISA. It should be noted, however, that section 12(1) is not an exemption and is not subject to any public interest test.

### Section 12(1) – Excessive cost of compliance

12. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for information would exceed that sum. As indicated above, consideration of the public interest is not relevant if section 12(1) applies.
13. The projected costs the authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA.
14. The authority may not charge for the cost of determining whether it:
  - (i) actually holds the information requested or
  - (ii) should provide the information.
15. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
16. In its review outcome, Police Scotland estimated that 225 hours would be needed to fulfil this request. This was based on a sampling exercise it had conducted. It explained that the information was held entirely in hard copy and that the majority of the eight folders held were

not indexed. It counted 303 documents within scope (subject to slight variation, due to missing staples/paperclips (and for this reason a physical count would be appropriate). Police Scotland also recognised that there would be some duplication or overlap within these documents, such as hand-written notes being duplicated as a typed memo, but the only way to know was to sift through the entire data set.

17. Police Scotland also provided details of the sampling exercise it conducted in support of the estimated costs it had calculated. The methodology and findings are as follows:

#### Document 1

30 minutes to scan and print (to enable redaction). This was undertaken by a Detective Constable at £20.24 per hour. A Detective Sergeant at £22.72 per hour then read and decided what to redact – then redacted 299 instances of personal data (names). This took 20 minutes.

Total time = 50 mins. Police Scotland estimated the costs for document 1 at £17.69.

#### Document 2

15 mins to scan and print (for redaction work) then 30 mins to read, decide what to redact and redact – same officer grades as above.

Total time = 45 mins. Police Scotland estimated the costs for document 2 at £16.42

18. Police Scotland noted the amount of withheld information protectively marked as “Secret” (one file, for example, was so marked in its entirety, with 94 documents of varying lengths). There was an expectation that these documents would need very heavy redaction, which (given the nature of the information and fact that photocopying was not permitted for secret documents) would involve scanning onto a secure system, printing in hard copy, manual redaction (there being no redaction software available for the system) and re-scanning.
19. The Commissioner notes some issues with these figures. As indicated above, the Fees Regulations cap staff costs at £15 per hour. Also, while these tasks would clearly be a necessary preliminary to any redaction, Police Scotland would not be able to take account of the time required for reading through the documents and deciding what to redact. In any case, paradoxically, the costs may not be so high for all documents marked “Secret” – it seems entirely conceivable that withholding in their entirety, as opposed to redaction, may be appropriate for at least some of these.
20. That said, the Commissioner acknowledges that these are challenging estimates for Police Scotland to make. No-one within the force will be readily familiar with the information, given its age, and it is unlikely to be possible to have a realistic idea of the amount of work required without reading the files in their entirety. In the circumstances, a degree of educated guesswork, appears appropriate.
21. Even at £15 per hour, allowing less time for the redaction process (say, 30 minutes) and allowing for the possibility that a reasonable proportion of the contents of the “Secret” files would be identified as qualifying for withholding in their entirety rather than redaction, it does not appear likely that the cost of compliance could realistically be brought within the £600 limit. Assuming only half the documents required redaction, a reasonable estimate would still appear to exceed £1,000.
22. Given the volume and type of information held, and taking into consideration the nature of the work reasonably required in the circumstances, the Commissioner is satisfied that Police

Scotland could not furnish the Applicant with the information sought within the £600 cost limit.

23. The Commissioner therefore finds that Police Scotland were entitled to rely on section 12(1) of FOISA and so were under no obligation to comply with the request.

### **Section 15(1) – narrowed request**

24. Section 15(1) of FOISA requires a Scottish public authority, as far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. In terms of section 15(2), a Scottish public authority is taken to have met this duty by conforming with relevant sections of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under the FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code<sup>2</sup>). At paragraph 9.4.3 of Part 2, the Section 60 Code states that it is good practice, when refusing a request on cost grounds, to provide clear advice on how the applicant could submit a new, narrower request within the cost limit.
25. Here, Police Scotland's review outcome (31 December 2020) gave advice on the possibility of reducing the volume of documents. It concluded that, given their nature, they contained a vast amount of sensitive information and exemptions would be considered applicable, even if the scope of the request were reduced. It provided illustrations of the exemptions it would consider applicable.
26. The Applicant believed the public interest would prevail over any qualified exemptions. However, the debate on any public interest remains hypothetical in the absence of a narrowed request being received: as things stand, section 12(1) applies and the public interest is irrelevant.
27. With regard to Police Scotland's provision of advice and assistance in this case, as noted above, much of the material is not indexed. Police Scotland have confirmed to the Applicant they have no way of knowing what is in the information held without going through it all. As indicated above, the Commissioner acknowledges this: the information is more than 30 years old (the usual span of a police officer's career) and has not been the subject of recent investigation. It is reasonable to conclude, given the nature of the information and the way in which it is held, that detailed examination would be required to allow the giving of meaningful advice on narrowing the request, were such narrowing to be a practicable means of securing information for the Applicant. In such a scenario, it is difficult to see how Police Scotland could reasonably have been expected to do more than it did by way of advice and assistance.
28. Consequently, the Commissioner accepts that Police Scotland satisfied the requirements of section 15 of FOISA in responding to the Applicant's request.

## **Decision**

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

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<sup>2</sup> [Code of Practice under section 60 of FOISA \(www.gov.scot\)](http://www.gov.scot)

## **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**

**29 September 2021**

## Appendix 1: Relevant statutory provisions

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### 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.

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

#### 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.

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#### 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.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

### 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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