

Decision Notice 011/2022

Death of Robin Cook MP - Whether requests were repeated

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202100842



Summary

Police Scotland were asked for information about the death of Robin Cook MP.

Police Scotland refused to comply with the requests, arguing they were substantially similar or identical to a previous information request, and were therefore repeated requests within the scope of section 14(2) of FOISA.

The Commissioner investigated and found that Police Scotland were not entitled to refuse the requests on the basis that they were repeated requests. He required Police Scotland to issue a revised review outcome, otherwise than in terms of section 14(2) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (Vexatious or repeated requests)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Both Appendices form part of this decision.

Background

1. On 30 May 2021, the Applicant made seven requests for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was about the death of Robin Cook MP. The full text of each of the requests is reproduced in Appendix 2 to this decision.
2. Police Scotland responded on 28 June 2021. They explained that all requests had been individually considered and their combined response was for administrative purposes only. Police Scotland considered the requests to be repeated in terms of section 14(2) of FOISA, on the basis that they were identical or substantially similar to a previous request made by the Applicant and there had not been a reasonable period of time between them. They explained that, although the previous request referred specifically to documents (i.e. the related death and incident reports), FOISA provided a right of access to recorded information and it was therefore the information in those documents that was considered exempt, as upheld by the Commissioner in *Decision 074/2021*¹. In Police Scotland's view, the Applicant's new requests were for the same information, i.e. that which was previously denied, and the format of the questions now posed did not change their decision.
3. On the same day, the Applicant wrote to Police Scotland, requesting a review of their decision on the basis that he was dissatisfied that his requests had been taken as a continuation of previous requests when, in fact, they were new and original. He was further dissatisfied that his individual requests had been "lumped together and taken as a whole".
4. Police Scotland notified the Applicant of the outcome of their review on 12 July 2021, fully upholding their original decision for the reasons set out in their original response. They considered the information requested to be the same, albeit specific questions had been posed as opposed to requesting the documents themselves. Police Scotland believed that the different format of the requests did not materially change the information sought, which

¹ [Decision 074/2021 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

was held within the two documents originally requested and, had section 14(2) not been applied, similar exemptions (to those previously relied on) would have been applied to each request individually. They further explained that taking the Applicant's individual requests as a whole made no difference to their consideration and the decision-making process - it was an administrative decision only, made to save time and resource at an extremely busy time.

5. Also on 12 July 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 Police Scotland's review because he disagreed that section 14(2) applied. He recognised that his previous request sought copies of files but, in this request, he did not ask for the documents which had already been refused, rather seeking information contained in those documents. He disagreed that the same exemption rules applied to information as well as physical files. The Applicant argued that disclosure of the information was in the public interest, given that the deceased was a high profile public figure. As his requests sought generic information that would not, in his view, breach data protection rules, he saw no legitimate reason to reject his requests.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant had made requests for information to a Scottish public authority and asked the authority to review their response to those requests before applying to him for a decision.
7. On 16 August 2021, Police Scotland were notified in writing that the Applicant had made a valid application and the case was subsequently 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. Police Scotland were invited to comment on this application and to answer specific questions. These focused on their justification for considering the requests to be repeated in terms of section 14(2) of FOISA.
9. Police Scotland provided submissions to the Commissioner.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of 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.

Section 14(2) – Repeated request

11. Section 14(2) of FOISA provides that, where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar, unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
12. For section 14(2) to apply, therefore, the following need to be considered:
 - (i) whether the Applicant's previous request was identical or substantially similar to the requests under consideration here;
 - (ii) whether Police Scotland complied with the previous request and, if so

- (iii) whether there was a reasonable period of time between the making of the original request and the making of the subsequent requests.

Were the requests identical or substantially similar to the previous request?

13. Police Scotland provided the Commissioner with the previous request made by the Applicant to support their position that the requests under consideration here were repeated requests.
14. The Applicant's first request, dated 2 September 2020, sought copies of the police report concerning the death of Robin Cook MP (who was pronounced dead on 6 August 2005 at Raigmore Hospital, Inverness), the original police press release/statement and the police logs. In response to that request, Police Scotland stated they no longer held the original press release and refused to provide the information they did hold in terms of sections 34(2)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations), 38(1)(b) (Personal information) and 39(1) (Health, safety and the environment) of FOISA, the public interest favouring withholding that information. At review stage, Police Scotland upheld their original decision, stating they considered the exemption in section 34(2) to be the most relevant.
15. In *Decision 074/2021*, the Commissioner concluded that all of the information withheld by Police Scotland was correctly withheld in terms of section 34(2)(b)(ii) of FOISA.
16. In the Applicant's seven requests dated 30 May 2021 (set out in Appendix 2), he asked for specific information about the death of Robin Cook MP.
17. As stated above, in his application to the Commissioner, the Applicant agreed that his previous request sought copies of files, but these latest requests did not ask for the documents which had already been refused, rather the information contained in those documents. He disagreed that the same exemption rules applied to information as well as physical files.
18. In their submissions to the Commissioner, Police Scotland confirmed that they wished to continue to rely on section 14(2) of FOISA for the requests under consideration here. They submitted that the information captured by the terms of the new requests was identical to that captured by the terms of the original request, and had not changed. Given the nature of the information, Police Scotland believed the Applicant would have expected that and was attempting to access the same information in a different way.

The Commissioner's view

19. The Commissioner notes that the Applicant disagreed that the same exemption rules applied to information as well as physical files. He would clarify that FOISA gives a right of access to *recorded information* falling within the scope of the request and held by a Scottish public authority at the time the request is made. While such information may well be held in physical files, the authority is required to consider disclosure of the *information requested* rather than the documents themselves.
20. The Commissioner has considered the content and context of the previous request, along with that of the requests under consideration here. While not expressed in exactly the same terms as the request of 2 September 2020, the Commissioner is satisfied that, to a certain extent, the requests dated 30 May 2021 are related to the previous request.
21. Notwithstanding this, the Commissioner recognises that, while any reasonable person would have some general idea of the type of information that might be held in the documents previously requested, the Applicant could not be expected to know what level of detail was

recorded in the reports asked for in his previous request, for any aspect of the police investigation.

22. In the Commissioner's view, in considering their response to the requests under consideration here (and bearing in mind that the request was for information rather than documents), Police Scotland ought to have taken steps to identify which of those requests were capable of being fully or partially answered by the information held in the reports asked for in the previous request, or whether any of the information now requested by the Applicant was, in fact, not held at all.
23. While the Commissioner recognises that certain information may have fallen within the scope of the latest requests as well as the first, this does not warrant the conclusion that the latest requests, which sought specific information, should necessarily be regarded as seeking substantially similar information (or indeed identical information, as claimed by Police Scotland).
24. In the Commissioner's view, acceptance of the Applicant's latest requests as a straightforward repeat of what was previously requested, stretches the bounds of reasonableness, and does not appear to be entirely fair to the Applicant, who could not reasonably be expected to know what information was actually contained in the reports previously asked for. While the provision in section 14(2) is there to ensure an authority does not have to go over the same ground unnecessarily, the Commissioner would stress that this does not provide for an authority to evade the basic obligation to confirm whether or not it holds the information requested (or, alternatively, to rely on any other provision in Part 1 of FOISA).
25. Having considered the first test set out in paragraph 12 above, the Commissioner does not accept that the Applicant's requests dated 30 May 2021 were substantially similar to the request made on 2 September 2020. In light of this, it is not necessary for the Commissioner to go on to consider the other tests for the application of section 14(2) of FOISA.
26. As the Commissioner does not accept that the requests under consideration here are repeated requests for the purposes of section 14(2), he finds that Police Scotland breached Part 1 of FOISA by refusing them on that basis.
27. The Commissioner therefore requires Police Scotland to respond to the Applicant's requests of 30 May 2021 otherwise than in terms of section 14(2) of FOISA. Depending on the outcome of its further consideration of the information in question, it may be appropriate to respond to individual requests individually.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by the Applicant on 30 May 2021.

The Commissioner finds that Police Scotland were not entitled to consider these requests to be repeated in terms of section 14(2) of FOISA and so failed to comply with Part 1 of FOISA.

The Commissioner therefore requires Police Scotland to carry out a further review and provide the Applicant with a revised review outcome for those requests, otherwise than in terms of section 14(2) of FOISA (i.e. applying section 21(4)(b) of FOISA), by **7 March 2022**.

Appeal

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.

Enforcement

If Police Scotland fail to comply with this decision, the Commissioner has the right to certify to the Court of Session that Police Scotland have failed to comply. The Court has the right to inquire into the matter and may deal with Police Scotland as if they had committed a contempt of court.

Margaret Keyse
Head of Enforcement

20 January 2022

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.

...

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

14 Vexatious or repeated requests

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

Appendix 2: Full text of information requests

In your files relating to the death of Robin Cook MP in August 2005, I would like to know:

Request 1

... if the hillwalker who assisted Gaynor Cook gave their name to the Northern Constabulary. Please note that I am not asking you to reveal the individual's name, but rather, to confirm whether or not a name was given. Words to the effect of "Yes, the hillwalker gave their name" or "No the hillwalker did not give their name" will suffice. If the latter, I would also like to know why the Northern Constabulary did not order the individual to give their name.

Request 2

... if media reports from period stating that Mr Cook had fallen into a ravine were accurate or not. Statements to the effect of "Yes, Mr Cook fell into a ravine" or "No he did not" will suffice.

Request 3

... if media reports from the period were correct, that Gaynor Cook was left to make it down Ben Stack mountain by herself, were accurate. I would also like to know if anyone, police officers or the hillwalker, accompanied Gaynor Cook back to Scourie Lodge or whether she walked there alone.

Request 4

... if the Northern Constabulary (now Police Scotland) interviewed Mr and Mrs Klein (spelled Clyne in media reports) who were the owners of the Scourie Lodge in which the Cooks were staying. If interviews were not conducted, I would like to know the reason. If interviews were conducted, I would like to know whether the Northern Constabulary was aware that Mr Klein had suggested to Mr Cook that Mr Cook climb Ben Stack, the mountain on which Mr Cook died, and whether the Northern Constabulary thought that this was relevant to the case.

Request 5

... if you could confirm the exact times of the following:

- 1) At what time the Northern Constabulary were first alerted to Mr Cook having fallen,
- 2) Whether the Northern Constabulary first alerted the Scottish health authorities or whether the parties originally at the scene first alerted them,
- 3) At what time the Scottish Ambulance service was first alerted,
- 4) At what time the search and rescue helicopter was dispatched,
- 5) At what time the search and rescue helicopter arrived at Ben Stack.

Request 6

- 1) If Mr Cook had a mobile phone on his person at the time of his collapse,
- 2) If Gaynor Cook had a mobile phone on her person at the time of Mr Cook's collapse,
- 3) Whether the call to the emergency services was made on the phone of the third party (the hillwalker),
- 4) Whether the hillwalker had a mobile phone or a satellite phone.

Request 7

... what the weather was like from the time Mr Cook collapsed to the time he was flown by search and rescue to Raigmore Hospital (i.e., a clear day, foggy, sunny, rainy?, etc.)

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