



Scottish Information
Commissioner
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Decision Notice 102/2022

Contact between Force Executive and Scottish Government concerning the deaths of Lamara Bell and John Yuill

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202101526

Summary

The Applicant asked the Authority about contact between its Force Executive and the Scottish Government regarding the deaths of Lamara Bell and John Yuill from September 2020 to September 2021. The Authority stated that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

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. Lamara Bell and John Yuill died after their car lay undiscovered following a crash on the M9 near Stirling in 2015. A passer-by had called the police, but the force took three days to respond. When officers went to the scene of the crash, Mr Yuill was already dead. Ms Bell died later in hospital.

2. On 7 September 2021, the Applicant made a request for information to the Authority which he subsequently refined on 13 September 2021. In his refined request, he asked for:
 - 1) Any correspondence sent between Police Scotland Force Executive and the Scottish Government civil servants, special advisers or ministers on the topic of the deaths of Ms Bell and Mr Yuill, covering the last year since 1 September 2020.
 - 2) Details of any meetings held between Police Scotland Force Executive officials and Scottish Government officials, ministers or special advisers since September 2020 which included discussions of the deaths of Ms Bell and Mr Yuill.
 - 2a) This should include but not be limited to agendas, minutes, notes, follow-up emails, handouts, attendees, locations, presentations and reports provided or handed out during these meetings.
3. The Authority responded on 18 October 2021 and informed the Applicant, in terms of section 17 of FOISA, that it did not hold the information requested. It explained that, following an extensive search of the email mailboxes, diaries and document filing structures used by the Force Executive, no information matching the request was found.
4. On 25 October 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he struggled to believe that this case had not been discussed by the Authority's officials and the Scottish Government.
5. The Authority notified the Applicant of the outcome of its review on 15 November 2021, fully upholding its original decision. It explained that each of the Force Executive mailboxes, diaries and document filing structures was searched using keywords to retrieve any relevant information held. However, no potentially matching documents were identified during the timeframe requested. By way of context, the Authority further explained that it did not retain emails or documents indefinitely in line with its [Records Retention Standard Operating Procedure](#)¹.
6. On 13 December 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he did not believe its response to be satisfactory, due to the high-profile nature of the incidents referenced. In his view, the Authority held correspondence that had not been disclosed.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 20 January 2022, the Authority was notified in writing that the Applicant had made a valid application.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These focussed on the searches

¹ <https://www.scotland.police.uk/spa-media/nhoby5i/record-retention-sop.pdf>

undertaken by the Authority to establish whether it held any information falling within the scope of the request.

10. The Authority provided submissions to the Commissioner. These are considered below.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Does the Authority hold any relevant information?

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the public authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
13. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
15. The Commissioner has taken account of the arguments in both the Applicant's requirement for review and his application, in which he provides reasons why he considers the Authority should hold the information requested.
16. In its submissions to the Commissioner, the Authority confirmed that it wished to rely on section 17 of FOISA as, following searches carried out by the Force Executive, no information falling within the scope of the request had been found.
17. The Authority described and provided supporting evidence of the searches it had undertaken to identify any information held falling within the scope of the request. These covered keyword searches of mailboxes and shared drives used, and any other relevant files held, within the Force Executive, for the following staff and officers:
 - Chief Constable's office
 - Deputy Chief Constables (Local Policing), (Crime and Operational Support) and (Professionalism)

- Assistant Chief Constables (Partnerships, Prevention and Community Wellbeing), (Organised Crime, Counter Terrorism and Intelligence), (Local Policing West), (Local Policing East), (Local Policing North), (Criminal Justice), (COP26), (Professionalism and Assurance), (Operational Support) and (Major Crime, Public Protection)
- Deputy Chief Officer
- Director People and Development
- Chief Digital Information Officer
- Chief Financial Officer
- Director Strategy and Analysis

18. In conclusion, as these searches identified no relevant information, the Authority was therefore satisfied that it held no information falling within the scope of the request.

The Commissioner's views

19. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request.
20. Given the high-profile nature and sensitivity of the incident to which the request relates to, the Commissioner is satisfied that the searches described by the Authority would have been capable of identifying any information relevant to the request. The Commissioner also notes the limited timeframe set by the Applicant and the fact that the request did not extend to the Authority as a whole. The Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the request. He finds that the Authority was therefore correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

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

Appeal

Should either the Applicant or the 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.

Margaret Keyse
Head of Enforcement

10 October 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.

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.

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).