

Decision Notice

Decision 056/2019: Mr N and Police Scotland

Number of officers deployed for President Trump's visit

Reference No: 201801722

Decision Date: 5 April 2019



Summary

Police Scotland were asked for the number of officers deployed during President Trump's visit in July 2018, in total and at specified locations.

Police Scotland initially withheld the information under various exemptions in FOISA. During the investigation, Police Scotland decided that they were not obliged to comply with the request as the cost of doing so would exceed £600.

The Commissioner accepted this, but found that Police Scotland should have responded in those terms and also failed to provide reasonable advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 16(4) (Refusal of request)

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

1. On 16 July 2018, Mr N made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:
 - 1) The total overall number of Police Scotland officers and personnel deployed to all locations connected to President Trump's visit for all three days.
 - 2) The number of officers and personnel deployed to the following locations:
 - a) the Trump International Golf Club Scotland at Balmedie, Aberdeenshire for all three days of that visit
 - b) the Trump Turnberry resort, Ayrshire, for all three days of that visit
 - c) the counter demonstration in Glasgow on Friday 13 July
 - d) the counter demonstration in Dundee on Friday 13 July
 - e) the counter demonstration and march in Edinburgh on Saturday 14 July
 - 3) The number of officers deployed and on duty at the peak of this operation across all these locations. For instance: was the greatest number of officers deployed on Saturday 14 July?
2. Police Scotland responded on 13 August 2018. Police Scotland stated that they held the information requested, but withheld it under the exemptions in sections 35(1)(a) and (b) (Law enforcement) and 39(1) (Health, safety and the environment) of FOISA.

3. On 20 August 2018, Mr N emailed Police Scotland requesting a review of their decision because he did not consider that the exemptions applied. He noted that the Acting Chief Constable of Police Scotland had commented to the Scottish Police Authority, on 28 June 2018, that 5,000 officers would be required to police the visit at an estimated cost of £5m¹.
4. Police Scotland notified Mr N of the outcome of their review in their letter dated 17 September 2018. They upheld the initial response without amendment.
5. On 11 October 2018, Mr N applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr N was dissatisfied with the outcome of Police Scotland's review because he considered that Police Scotland had been unable to justify the decision not to provide any personnel figures, when the Acting Chief Constable had indicated a figure of 5,000.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr N 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. On 6 November 2018, Police Scotland were notified in writing that Mr N had made a valid application. Police Scotland were asked to send the Commissioner the information withheld from Mr N. Police Scotland provided the information and the case was 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 about the exemptions relied upon in their response to Mr N. Police Scotland responded on 14 January 2019.
9. Police Scotland were then asked to explain what information they held about the actual (rather than planned) deployment numbers and for further submissions on the exemptions being relied upon; specifically the harm in disclosure of the withheld information.
10. Police Scotland explained that two types of resources were utilised during President Trump's visit: conventional and specialist staff. Policed Scotland confirmed that the actual number of conventional resource deployment could be retrieved, but submitted that obtaining the numbers for specialist deployment staff was a far more difficult task. Police Scotland also provided further submissions as to the harm in disclosure of the withheld information.
11. Police Scotland were asked to confirm that they held the actual (rather than the planned) deployment numbers for each part of the request. If the information was held, Police Scotland were asked to provide an estimate of the time and cost to search for the requested information.
12. In response, Police Scotland confirmed that they hold the overall numbers of police officers and personnel deployed to all locations connected with President Trump's visit for all three days, but that the information would have to be searched for. They estimated that it would cost in excess of £600 to retrieve information for just one of the individual specialist functions involved. Police Scotland submitted that they would incur excessive costs (i.e. in excess of the £600 limit laid down by the relevant Fees Regulations).

¹ <https://www.telegraph.co.uk/news/2018/06/28/trump-trip-scotland-could-cost-police-scotland-5m-tie-5000-officers/>

13. Mr N was advised of Police Scotland's amended position and that they now considered that, in terms of section 12(1) of FOISA, they were not obliged to comply with his request because the cost would be more than £600. Mr N asked the Commissioner to issue a decision.
14. Police Scotland were asked for further explanation as to their amended reasoning, specifically why they had not identified sooner that section 12(1) of FOISA would apply and whether they had provided reasonable advice and assistance to Mr N. Police Scotland provided their comments, which are considered below.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr N and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Police Scotland's handling of the request

16. The Commissioner is disappointed that, at such a late stage, Police Scotland concluded that they were not obliged to comply with the request because of the costs involved. In the Commissioner's view, Police Scotland should have ensured that any issues regarding the cost of compliance were identified and taken into account when first responding to Mr N's request or when responding to his requirement for review. This would have allowed Mr N an opportunity to properly challenge Police Scotland's position regarding costs. Furthermore, it would have afforded Police Scotland an opportunity to provide advice and assistance to Mr N, to help him narrow the scope of the request so that the cost of compliance did not exceed the prescribed limit.

Section 12(1) - Excessive cost of compliance

17. Under section 12 of FOISA, 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 for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). Consequently, the Commissioner has no power to order a public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.
18. The projected costs the public 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:
 - (i) locating
 - (ii) retrieving, and
 - (iii) providingthe information requested in accordance with Part 1 of FOISA.
19. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

Police Scotland's submissions

20. Police Scotland explained that they use two systems to plan events and operations. These are:
 - SCoPE - Human Resource and Duty management system, which is used to plan events or operations into the future.
 - STORM - command and control system which allocates the resources from SCoPE, operationally and in real time.
21. They explained that, when planning a police deployment for an event, Police Scotland staff can allocate resources to a geographically specific area (such as Prestwick Airport). However, operational commanders have to make decisions on deployment based on an evolving assessment of threat, risk and harm and have the ability to "move" resources from one geographical area to another as required. Police Scotland confirmed that resources were moved during the visit of President Trump.
22. Police Scotland confirmed that they hold the overall numbers of police officers and personnel deployed to all locations connected with the President's visit for all three days, but stated that this information would have to be searched for.
23. Conventional resource deployment can be extrapolated from the numerous operational orders: whilst time consuming, this is possible. (Police Scotland noted that this type of information is not retrievable from its STORM database.)
24. Information relating to the specialist resources deployed during the visit is held by each of the divisions involved and by individual specialist units within each of the divisions. In this case, the units would be likely to include Firearms, Public Order, Mounted Branch, Dog Branch, Search, Roads Policing, and Close Protection. While some of these specialists would be statically deployed at a particular location, others would have a mobile remit and would move in and out of that location as the operational need arose, and this could not be accurately quantified.
25. In relation to the deployment of specialist personnel, Police Scotland stated that information about the planned deployment could be identified through individual National and Local tactical and operational plans, but to ascertain actual deployment would require a retrospective manual check of those planned deployments against each individual officer's personal record within SCoPE.
26. Police Scotland explained that there are a number of plans which would be held by each division and in addition there would also be divisional sub-plans.
27. As an example, Police Scotland estimated that the time taken by "Events Planning West" to review the tactical and operational orders and associated briefing documents and cross refer the planned deployment with the actual deployment would conservatively take five days to complete. It submitted that this exercise would need to be replicated for each specialist function, which based on those mentioned above alone could take an additional five days for each function at a cost of £15 per hour and which would attract costs in excess of £3,000.
28. Police Scotland explained that the requested information is held by each specialist function, and all information considered within scope of Mr N's request would need to be gathered from each division/function. This exercise would be carried out by a number of different staff, from Constable to Chief Superintendent, as the successful collation of information would rely

heavily on their specialist knowledge of the operation and involvement with the planning and execution. Police Scotland stated that there is no overarching IT solution which manages planning of such operations and therefore no central repository from which to retrieve this information.

29. Police Scotland estimated that it would take five weeks to complete the search; however, it could take longer if those with specialist knowledge were unavailable for periods of time “due to the nature of policing”.

The Commissioner’s analysis and findings

30. Police Scotland have now explained to the Commissioner’s satisfaction why they would have to retrospectively search their records to identify where each individual officer (and, in particular, where each specialist officer) was actually deployed during the visit by President Trump.
31. The Commissioner accepts that specialist officers from a range of different divisions would be required to police a visit from the President of the United States. The Commissioner also accepts that Police Scotland would require officers to move between locations during the visit.
32. Given that the information about planned or actual resource deployment for such operations is not held in a single system, the Commissioner cannot identify any more direct or simpler way to calculate the number of actual officers deployed than that proposed by Police Scotland.
33. Police Scotland has been clear that the cost of providing information about the deployment of specialist resources would be in excess of £600, for the reasons explained above. Their submissions are less clear in relation to the cost of providing information about the deployment of “conventional” police resources. Although Police Scotland has indicated that the search for this information would be “time consuming”, it has not attempted to estimate the cost of such a search.
34. The Commissioner notes that Police Scotland provided him with figures for the actual deployment of conventional officers at one of the locations specified by Mr N. Police Scotland did not indicate how long it took to retrieve this information.
35. The Commissioner must consider Mr N’s request as it was expressed. Mr N did not distinguish between specialist and conventional police resources, and therefore the Commissioner cannot do so either. Given that the Commissioner accepts that the cost of providing the information relating to specialist resources would be more than £600, he must find that Police Scotland were entitled to rely on section 12(1) in relation to Mr N’s request, even without receiving an accurate estimate of the cost of providing figures for conventional resources. The Commissioner finds that, in terms of section 12(1) of FOISA, Police Scotland were under no obligation to comply with Mr N’s request.
36. As Police Scotland failed to give notice to Mr N that they were refusing his request in terms of section 12(1) of FOISA, which they now rely on, the Commissioner finds that they failed to comply with section 16(4) of FOISA when responding to his request.

Section 15 of FOISA - Duty to provide advice and assistance

37. Section 15 of FOISA requires a Scottish public authority, so 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.
38. Police Scotland were asked whether they could have provided additional advice and assistance to Mr N, to help him reduce the scope of his request and bring it within the cost threshold. Police Scotland stated that they did not consider that there was any way to reduce the scope of the request, to bring the cost of compliance within the £600 limit.
39. The Commissioner is not satisfied that Police Scotland has given sufficient consideration to its duty to provide advice and assistance to Mr N. Police Scotland should have informed Mr N in response to his request or request for review that the provision of the actual deployment figures he asked for (rather than planned deployment figures) would incur excessive costs. Police Scotland did not indicate to Mr N that retrieving the information relating to specialist police resource deployment would be a much more complicated and expensive process than retrieving information relating to the deployment of conventional resources. In both cases, this information would have enabled Mr N to consider ways of making a request which would not incur excessive costs.
40. The Commissioner finds that Police Scotland failed to provide advice and assistance to Mr N, in line with section 15(1) of FOISA.

Decision

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

The Commissioner found that Police Scotland failed to comply with section 16(4) of FOISA when refusing Mr N's request, by failing to cite section 12(1) which they later relied upon. Police Scotland also failed to provide appropriate advice and assistance to Mr N in line with section 15(1) of FOISA.

The Commissioner accepted that, under section 12(1) of FOISA, Police Scotland were not obliged to comply with Mr N's request, as the cost of doing so would exceed the limit in the relevant Fees Regulations.

The Commissioner does not require Police Scotland to take any action in relation to this decision.

Appeal

Should either Mr N 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.

Daren Fitzhenry
Scottish Information Commissioner

5 April 2019

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.

...

- (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.

...

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.

...

16 Refusal of request

...

- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.

...

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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