

Decision Notice 111/2020

Minutes for all meetings of the former Northern Joint Police Board

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202000568



Scottish Information
Commissioner

Summary

Police Scotland were asked for the minutes for all meetings of the former Northern Joint Police Board in 2002, 2003, 2007 and 2008. Police Scotland stated that they did not hold the requested information, but that the information was held by the Scottish Police Authority.

The Commissioner found that Police Scotland had fully complied with FOISA in responding to the request and that it did not hold the minutes in question.

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)

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 7 October 2019, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The Applicant requested copies of the minutes for all meetings of the former Northern Joint Police Board (NJPB) in 2002, 2003, 2007, and 2008.
2. Police Scotland responded on 4 November 2019. They stated that they did not hold the requested information and issued a refusal notice in terms of section 17 of FOISA. Police Scotland advised the Applicant that information relating to the legacy NJPB was held by the Scottish Police Authority (SPA) and that the Applicant could therefore request the information from the SPA. Police Scotland gave the Applicant the SPA's website details¹, where contact details could be found for the SPA.
3. Later the same day, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that he believed "the information requested does exist, and that the information is held by Police Scotland for administrative purposes, and that it should be made available for public scrutiny."
4. Police Scotland notified the Applicant of the outcome of their review on 2 December 2019. Police Scotland explained that they had checked with staff in Highlands and Islands divisional command team (formerly Northern Constabulary) and also with the SPA and confirmed that the information the Applicant had requested was not held by Police Scotland. Police Scotland repeated their advice to the Applicant that he may wish to make his request to the SPA. Police Scotland upheld their original response that section 17 of FOISA applied.
5. On 20 May 2020, 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 Police Scotland's review because he believed the information exists and "has been retained for prescribed policing purposes, specifically the investigation of crime and administrative

¹ <http://www.spa.police.uk/about-us/foi>

purposes". He also stated that Police Scotland did not provide any assistance or help in terms of what other agency or agencies he could obtain the recorded information requested from.

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. Police Scotland were invited to comment on this application and to answer specific questions. These related to how Police Scotland had established that it did not hold the information.

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 Police Scotland.

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. Police Scotland gave the Applicant notice in terms of section 17 of FOISA that they did not hold the information requested. The Applicant's dissatisfaction is that he believed the information he requested exists and had been retained for prescribed policing purposes, specifically the investigation of crime and administrative purposes, and is held by Police Scotland.
11. The question for the Commissioner is whether Police Scotland complied with FOISA in responding in this way to the Applicant's request, or whether Police Scotland held any recorded information that fell within the Applicant's request.
12. Police Scotland were asked to explain how they had satisfied themselves that they held no information that fell within the Applicant's request. Police Scotland responded that searches were carried out by the Highlands and Islands divisional command team for any records pertaining to the NJPB that may have been held by what would have been at the time, the Force Executive team of Northern Constabulary. Those searches were negative, and confirmed what would have been expected - that information held by the legacy NJPB (and all other Joint Boards) was transferred to the SPA around 2013 when the Scottish Police Forces merged. Police Scotland also added that their FOI team had checked with the SPA and the SPA had confirmed that the records were held by them.
13. 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.

14. Having considered all the relevant submissions, the Commissioner accepts that Police Scotland have taken adequate and proportionate steps to establish the information it held which fell within the scope of the Applicant's request. In reaching this conclusion, the Commissioner has taken into account the actual searches undertaken by Police Scotland to assess if any information was held and these searches seem reasonable: the searches took account of the area within Police Scotland where such information would be held (if held) and the staff involved in searching for the information had experience and knowledge of the subject, reducing the likelihood of searches being faulty or relevant information being overlooked.
15. Also, Police Scotland explained why they no longer held the information and also where the information was now held (with the SPA). It must be noted that Police Scotland did not state at any time that the information requested did not exist - simply that it was not held by them.

Section 15 - Advice and Assistance

16. The Applicant was dissatisfied as he did not believe that Police Scotland had provided any assistance or help in terms of what other agency or agencies he could obtain the recorded information requested from them.
17. 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.
18. In this case, Police Scotland explained why they did not hold the information 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.
19. In the circumstances, the Commissioner finds that Police Scotland provided reasonable advice and assistance to the Applicant and complied with section 15 of FOISA.

Decision

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.

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.

**Margaret Keyse
Head of Enforcement**

29 September 2020

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.

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