

Decision Notice 115/2021

Vatican Flag

Applicant: The Applicant

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

Case Ref: 202100200



Scottish Information
Commissioner

Summary

Police Scotland were asked for information about the flag of the Sovereign State of the Vatican City. Police Scotland stated that complying with the request would cost more than £600 and so they were not obliged to comply.

Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance)

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 31 July 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:
All and any Information whatsoever held now or in the past by Police Scotland or its constituent forces in any format concerning the holy flag of The Sovereign State of Vatican City from 30/9/2002 to 31/7/2020 that includes public, restricted and top-secret information.
2. Police Scotland responded on 5 August 2020. Police Scotland advised that an initial assessment of the request confirmed that any “force-wide” search for correspondence was limited by a number of factors, including security and password protection arrangements in individual business areas, administration rights to access different classes of information and the sheer scale of such an undertaking. Police Scotland stated that they estimated the cost of processing the request would exceed the cost limit of £600 and, on that basis, provided a refusal notice in terms of section 12(1) of FOISA.
3. Police Scotland further advised that they had then gone on to consider whether it would be of assistance to advise the Applicant to refine the scope of the information requested (e.g. by department or individual) in order to potentially reduce the cost of compliance under the terms of FOISA. They advised the Applicant that, if they were interested in a particular aspect/department, then they would be happy to look at the request again.
4. On 7 October 2020, the Applicant wrote to Police Scotland, requesting a review of their decision. The Applicant stated they did not believe password protection or administrative agreements should prevent FOI access in general. They reiterated that the request was as set out in the original request. The Applicant added:
However, if this cannot be done then I would request at review and in order to narrow the scope of the request all the while seeking the same information as originally sought, information if it exists between the dates of 31/7/2017 - 31/7/2020 and in regards restricted plus top-secret information.

Finally, please estimate how much such an endeavour as specified in the original request or the suggested compromise would likely cost and detail if there is anyway any person or organisation could pay for such themselves'.

5. Police Scotland notified the Applicant of the outcome of their review on 20 October 2020. Police Scotland upheld the original response and advised the Applicant that, in cases where all information on a topic is requested, this creates issues due to the large scope of the request and the time it would take to comply. By way of an example, Police Scotland submitted that if they took one day of the revised date range (31/07/2020), there were 5,042 incidents recorded on their incident recording system. They advised that if it took three minutes to check each incident, this would amount to over 250 hours to check just one day of incidents.
6. Police Scotland further advised that it was difficult to estimate the cost of retrieving the information requested, as even calculating this for all the systems/files they held would likely exceed the cost limits set out in FOISA. As an example, however, they explained that, for their incident recording system, and assuming around 5,000 incidents per day, the request would take around 89,000 hours of work for each year of data requested. At an average cost of £15 per hour, this would equate to £1,335,000 per year requested.
7. On 11 February 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. In summary, the Applicant stated they were dissatisfied with the outcome of Police Scotland's review because, in their view, Police Scotland's claim that the cost of compliance would exceed the prescribed amount was not objectively verifiable.

Investigation

8. 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.
9. On 16 March 2021, Police Scotland were notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 12 May 2021, Police Scotland were invited to comment on this application and to answer specific questions. These focused on the application of section 12(1) of FOISA.
11. Police Scotland responded with submissions: these will be considered below.

Commissioner's analysis and findings

12. 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 the Applicant and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Section 12(1) – excessive cost of compliance

13. Section 12(1) 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 relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5 of the

Fees Regulations). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.

14. The projected costs an 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. The authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
15. As outlined, in their review response to the Applicant, Police Scotland explained that, assuming around 5,000 incidents per day on their incident management system, the request would take around 89,000 hours of work for each year of data requested. At an average cost of £15 per hour, this would equate to £1,335,000 per year requested.
16. The investigating officer asked Police Scotland to provide detailed calculations supporting their estimated costs. They were asked to conduct a sample exercise to evidence the cost of complying with the request.
17. Police Scotland submitted that section 12(1) applied to the Applicant's request and argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit. They explained that the work required could not be done centrally, as the relevant records were held across the country in a variety of local systems. They advised that Police Scotland had 13 local policing divisions covering the country, and a number of specialist departments working nationally. They further explained that the divisions and departments were thereafter broken down into sub divisions and local departments, the Specialist Crime Division alone having 36 departments within it.
18. Police Scotland submitted that all of these departments would hold local files, policies and reports, all of which would require to be manually checked. They provided an example of the IT systems that would require to be checked, explaining that they were unable to provide a costing for the manual search of all paper/electronic files within divisions/local departments, due to the number and diversity of the departments involved, as well as the volume of documents held by each. They stated that this was why they endeavoured to demonstrate the scale of the task to the Applicant in their review response.
19. By way of example, in addition to the explanation provided to the Applicant in their review response, Police Scotland provided a further example of the cost of complying with the Applicant's request. In this, they submitted that the published data available online showed that for the year 2020/2021, there were 7,020 reports categorised as hate crimes. They explained that this was just another example of the number of reports that would need to be examined and then cross referred with other systems, statements and notebooks.
20. Police Scotland submitted that, allowing three minutes to check each of the 7,020 hate crimes recorded in 2020/2021, at an hourly staff rate of £14.58, they arrived at a total cost of £5,117.58 attributable to the hate crimes recorded for that year alone. The Commissioner accepts that information within the scope of the request would likely to be categorised as such.
21. Having considered the explanations provided, the Commissioner accepts that the information could not be readily extracted from the systems used by Police Scotland, without examining

all of the systems referred to by Police Scotland and the manual examination of each file/report.

22. Taking account of all the circumstances, the Commissioner is satisfied that Police Scotland have provided a reasonable estimate of the cost of complying with the Applicant's request for information. Even if the request was limited to a very tight timeframe (noting that the request covered a period from 30/9/2002 to 31/7/2020), given the nature of the work required, and noting the number of incidents reported in a single day, the Commissioner accepts that the request could not have been responded to within the £600 limit.
23. Consequently, the Commissioner is satisfied that Police Scotland were entitled to rely on section 12(1) of FOISA in relation to the Applicant's information request, and therefore were under no obligation to comply with the request.

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

4 August 2021

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.

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.

...

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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